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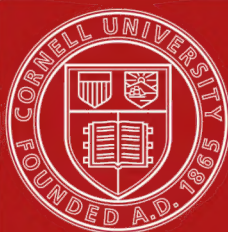
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BOSTWICK'S LAWYERS' MANUAL

A DESK BOOK

For Lawyers, Law Clerks and Law Students

Containing Handy Forms, Hints on Appeal Procedure, Suggestions,
Letters, Checks for Closings, Memoranda, Tables,
Reminders, Etc., Etc.

SECOND EDITION

A Mechanical Aid to the Busy Practitioner

by

CHARLES F. ^{RANCIS} BOSTWICK, Ph.B., LL.M., J.D.

of the New York Bar

ALBANY, N. Y.
MATTHEW BENDER & COMPANY
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1917

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PREFACE TO SECOND EDITION

Almost ten years have elapsed since the first edition of the Manual. During that time very many changes have taken place in the law, making many of the forms out of date, and their use, for any purpose, unsafe and misleading. A new edition has been requested by the profession and I here present it.

Little departure has been made from the general plan of the former edition, as it has proven its value and usefulness. Many new forms have been added that seemed to be needed to make the book more complete. Many Surrogate's Court forms with directions how to use them as occasion and circumstances require, tend to make this edition more helpful. Over four hundred pages of up to date material, including notes on the more common and important matters of practice have been added.

No effort has been spared to attain the purpose of the Manual as expressed in the preface to the first edition.

I desire to thank the profession generally, not only for the generous reception of the first edition, but for the many kind words of appreciation of its value and usefulness.

Again, but with more emphasis, I must thank Richard K. McGonigal of the New York Bar, for his untiring and invaluable aid in the production of this second edition.

CHARLES F. BOSTWICK.

2 Rector Street, N. Y. City,
January 2, 1917.

PREFACE TO FIRST EDITION

I have been led to write this book by the knowledge, impressed upon me many, many times in my experience as a lawyer, that if such a book had been available to me I could have saved an immense amount of time and insured myself against many costly mistakes.

My book is not intended merely or mainly as a form-book, but as a mechanical aid in routine work, and only common forms, such as every lawyer's experience soon requires him to become very familiar with, are to be found here.

Forms are not infrequently as misleading as they are helpful, and the value of many of those that I have printed here lies in their approved accuracy, and their thorough detail; the value of others lies in their suggestiveness in regard to details intended to aid in the dictation of similar papers.

To the students of law, to clerks in a law office and especially to the busy practitioner, who does not want to spend any unnecessary time on matters relating to practice and who does want to feel that any suggestions he may accept out of the experience of another, have been thoroughly considered and are well advised, I submit these results of many years of practical work, and much careful study, believing that the book will be really and generally useful.

Acknowledgment is made for the aid given me by Richard K. McGonigal of the New York Bar.

CHARLES F. BOSTWICK.

OCTOBER 1, 1907.

Mutual Life Buildings.

NOTE.—G. R. P. indicates General Practice Rules or General Rules of Practice. Many of the "checks" may be typewritten and taken to closings with advantage. Late authorities should be posted in the book without delay and thus the Manual can be kept up to date. Reference to Special Term decisions, many of which are never reported specially should be so inserted. Interleaved copies of the book are best suited for this purpose. Suggestions from the users of this book, that will promote its usefulness along the lines indicated are especially requested.

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PART I
SUGGESTIONS AND REMINDERS

PART I

SUGGESTIONS AND REMINDERS

I

IMPORTANT

There is no power in any court to extend your time to bring an action after it is barred by the Statute of Limitations.

There is no power in any court to extend your time to appeal.

Within three days after a summons, writ, or other original process is served in any action in the Supreme Court, New York County, or Supreme Court, Bronx County, or in the County Court, Bronx County, the attorney or party causing the same to be served must file said process with proof of service, in the office of the Clerk who has custody of the records of the court in which the action is brought.

Upon the filing of the summons, writ or other original process, the Clerk stamps upon the front page, a number to be one of the series for that year, which is known as the "Index Number," and thereafter all original papers in the action, with proof or admission of service of same, must be filed with or mailed to the Clerk who stamped the number on the summons or other original process not later than one day after service. (§ 1245-a, Code.)

ALL papers in the action shall bear the same number and year as the summons, writ or other original process, which number shall constitute a part of the title of such action.

 County Clerk's Certificate

It must be borne in mind that by Rule 23, G. R. P.,

ALL motions for relief to which a party is not entitled as a matter of right shall be made upon papers showing merits, and the good faith of the prosecution or defense, which may be shown by any proof that shall satisfy the court.

Notwithstanding this rule, all the forms herein do not contain an affidavit of merits and good faith in their body, so when the provision is not complied with in the body of the form, an affidavit of merits should be annexed.

You should realize that the service of pleadings or other papers in any action or the taking of any other step may amount to a waiver of a substantial right.

Experience has proven that so many County Clerk's Certificates do not comply with the law and have to be returned, that the careful practitioner now forwards a proper form with the request that the same be filled out by the County Clerk. The following form complies with the Law of New York:

STATE OF....., }
 COUNTY OF....., } ss.:

I, ..., Clerk of the County of (*if County Clerk, insert name of County*), in the State of, and also Clerk of the (*insert name of court*), the same being a Court of Record in and of the aforesaid County, having by law a seal, do hereby certify that, by whom the foregoing acknowledgment or proof was taken, and whose name is subscribed thereto, was at the time of taking the same a (*insert official title of person taking acknowledgment*), residing in said County, duly commissioned and sworn and authorized by the laws of said State to take the proof or acknowledgment of deeds and other instruments in writing, to be recorded in said State, and to administer oaths or

Motions — Replying Affidavits

affirmations in said County, and that I am well acquainted with his handwriting and verily believe that the signature to the foregoing certificate is genuine.

[Seal of Clerk of Court to be impressed here.] IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, which is the seal of said Court, this day of, 19..

....., Clerk.

.....
(If signed by a Deputy Clerk, he should sign the Clerk's name and his own name as Deputy.)

Upon an application for an order to show cause the papers presented must show (1) special and sufficient reasons for requiring a shorter notice than eight days, or five days where the attorneys for the respective parties reside or have their office in the same city or village, (2) statement showing the then present condition of the action, (3) whether at issue, and (4) if not yet tried, the time appointed for holding the next Special or Trial Term where the action is triable. An order to show cause shall also (except in the first judicial district) be returnable only before the Judge who grants it or at a Special Term appointed to be held in the district in which the action is triable. (Rule 37, G. R. P.)

If a notice of motion is served ten days before the return day thereof, it may, immediately after the prayer for relief and before the signature, contain the following statement: "Answering affidavits must be served five days before the return day," in which case answering affidavits, in order to be used upon the motion, must be so served. The moving party, upon receiving such answering affidavits, may serve affidavits in reply at least two days before the hearing. Such replying affidavits shall be limited strictly to matters in reply. Affidavits in answer and reply cannot be read upon the motion if not so served, unless the court in its discretion, for good cause shown, otherwise orders. (Rule 37, G. R. P.)

Ex parte Applications

Every pleading, deposition, affidavit, case, bill, exceptions, report, paper, order or judgment exceeding two folios in length, must be distinctly numbered and marked at each folio in the margin thereof. (Rule 19, G. R. P.)

Whenever application is made ex parte on affidavit to a judge or court for an order, the affidavit must state whether any previous application has been made for such order, and, if made, to what court or judge, and what order or decision was made thereon, and what new facts, if any, are claimed to be shown. For failure to comply with this rule, any order made on such application may be revoked or set aside. This rule applies to proceedings supplementary to execution, and to every application for an order or judgment made in any action or special proceeding. (Rule 25, G. R. P.)

Affidavits sworn to in another State are a nullity without the certificate as to official character and genuineness of the signature of the officer administering the oath, required by section 844 of the Code. (60 *Misc.* 143.)

The forms in this book serve their intended purpose when they are used as mechanical aids to the busy practitioner.

This book should be kept up to date.

II

INFORMATION TO OBTAIN FROM CLIENTS ON FIRST INTERVIEW

(Useful general hints as to questions)

First interviews are important. Failure to obtain complete and necessary information then is often embarrassing to both lawyer and client. The following suggestions are meant to assist the busy practitioner in avoiding such omissions:

CLIENT:

Full name, business and residence address, telephone numbers.

Business connections or employment; citizen or alien.

If a foreign corporation, is § 15 of General Corporation Law involved, and has license fee been paid?

Is security for costs involved?

If a non-resident or foreign corporation, to whom can assignment be made if advisable, and address and telephone number?

If infants involved, get facts for appointment of guardian *ad litem*.

Is client sole party interested, if not, names and addresses of others.

If partnership, is it limited or general and full names of all partners, which are general and which are special, and date of filing.

Will proper party be available for purpose of verifying pleadings or making affidavits?

Full name and address and telephone number of person giving information (if interview is not with client) and his relation to the parties and the case.

Has any attorney been consulted about the case?

Has any receipt been given or correspondence had or admission made?

Have any papers been served, if so, date of service and indorse same at once and other facts for diary and blotter entries.

On First Interview

OPPONENT:

Full names of all, business and residence addresses.

Nature of business or employment.

Is opponent a domestic or foreign corporation.

If foreign corporation, is § 15 of General Corporation Law involved and has license fee been paid; does it do business in this State, address of foreign offices.

Age and citizenship; if infant, get facts for service of process.

Financial responsibility.

Can he be served in the State and will service be easy or difficult, best time and place for service of process?

Can or will bankruptcy follow action?

If partnership, is it general or limited and full names of all partners, which general or special and date of filing of certificate.

Has opponent a right to do business under name used?

Any party interested declared incompetent?

THE CASE:

Facts in greatest detail as to nature of action or obligation, and when and where it arose.

If contract, where made and where to be performed?

Has the obligation been acknowledged or any payment been made and when?

If a note, is it original or renewal?

Names and addresses and telephone numbers of all witnesses; arrange for interviews or the obtaining of affidavits.

Arrange to obtain all papers, writing, correspondence or other documentary evidence relating to the matter.

If an account is involved, ask for two copies itemized bill or invoice.

If there is an account stated, obtain copy of statement of account.

Any transfers of stock or agreements therefor and were stock transfer stamps attached?

Is a mechanic's lien necessary or advisable? (See p. 13.)

Is a statement of claim to Municipal Officer or Corporation Counsel necessary?

On First Interview

Should the Attorney-General or State Comptroller receive notice or be made a party?

Any estate or municipality involved (look out for short statute of limitation.)

Is § 829 of the Code involved?

Is the case affected by the Statute of Frauds?

Is the Statute of Limitation involved?

Do grounds of attachment exist?

Do grounds of arrest exist?

Do grounds of replevin exist?

Do grounds of injunction exist?

Does case involve filing *lis pendens*, if so, obtain material for same and note time in which complaint must be served?

Is attorney liable for costs?

Any facts aiding in determining the place to bring action — *e. g.*, in Federal Court or State Court, and is the law more favorable in one State than others?

Can action be moved to Federal Court?

Any counterclaim; if so, amount and nature.

Will examination before trial be required?

Any deposition necessary to be taken outside the State.

Should summons be specially marked as required by §§ 1774 and 1897, Code?

Any answer to be served on co-defendants so as to obtain judgment against them.

Is case one where written statement of facts by client is required?

Sometimes it is quite necessary to have an understanding who is to be responsible for the legal service, disbursements and costs.

III

INFORMATION TO OBTAIN FROM CLIENTS FOR THE PURPOSE OF AN ACTION FOR PERSONAL INJURIES

For the purpose of bringing an action for damages for personal injuries (or for causing death by negligence) in addition to what has been stated, the following suggestions will help to bring out a full preliminary preparation of the case:

THE ACCIDENT:

Where did it occur.

When did it occur — day and hour.

How did it occur — surrounding circumstances — daylight or dark, weather, condition of street, premises, machinery, appliances, etc.

If vehicle — name of owner or lessee, name of chauffeur, driver or person operating, name on vehicle, license number, permit number, description, signs on same, occupants, loaded or empty.

If train — number, name and number of conductor or any of crew.

If car — name and number of motorman and conductor, number of run.

Who saw it — policeman, fireman, or other uniformed municipal employee, railroad employee, names or numbers, passing vehicles, numbers, etc.

Nature and extent of injury — ambulance called, report, police blotter.

How long in hospital?

Name and address of doctors attending. Bills.

Proof or indications of permanent injuries.

How long away from business?

Earnings?

Expense for doctors, nurses, medicines, surgical appliances, special treatment, special damages.

If injured person an infant — full name, age and residing with whom?

Name and address of parent or nearest relative, general guardian.

Who will bring action as guardian *ad litem*?

Action for Personal Injuries

Any notice necessary to lay foundation for action.

e. g., Municipal corporation — employer.

Has client made statements concerning accident to newspapermen, investigators, detectives, claim agents?

Has client signed retainer agreement, knowingly or unwittingly accepted settlement or signed release?

Statements admissible as *res gestae*.

Other persons injured in same accident — name and address of their attorneys.

As to defendant's liability — contributory negligence.

Fellow servant rule.

Statutory violation.

Omission.

Commission.

Presumption.

Employers' Liability Law — State or Federal.

Owner or lessee of premises or vehicle.

Could responsibility be delegated?

Independent contractors.

Who was in charge of work — superintendent or co-worker — subcontractor — general contractor.

Examination by Corporation Counsel.

Coroner's Inquest — District Attorney — Insurance Company.

Is diagram, photograph, model, chemical analysis, X-ray or examination to be ordered ?

Is expert testimony necessary and available?

Any arrest been made?

Is *res ipsa loquitur* involved?

Name and address of defendant.

If corporation — foreign or domestic — officers, managing agent for service.

If partnership — general or limited, names and addresses of partners.

Is defendant insured against liability?

Witnesses — names and address — statements or affidavits, are depositions necessary or examination before trial?

Action for Personal Injuries

In death case — names and addresses of next of kin, are they
citizens or aliens, rights of foreign consuls?

Did deceased leave a will?

Who will qualify as administrator?

Statements in correspondence.

Death certificate.

IV

INFORMATION TO OBTAIN FROM CLIENTS FOR THE PURPOSE OF FILING A MECHANIC'S LIEN

1. Claimant's full name and residence.
 - (a) If a partnership, full names and residences of all partners, and the firm's principal place of business.
 - (b) If a corporation, under the laws of what State it is incorporated, and if foreign, whether it has obtained a certificate of authority to do business in New York State and paid a license fee; and where its principal place of business is in this State.
2. Name of owner, lessee or party in possession of premises, and residence and his complete interest in the property.
3. Name of party for whom labor was performed or to whom materials were furnished, or, if lienor is contractor or subcontractor, with whom contract was made, and who employed claimant.
4. Is claimant contractor or subcontractor?
5. Copy or terms of contract under which services were rendered or materials furnished.
6. The nature of labor;
 agreed price of labor,
 or value of labor.
 The nature of materials;
 agreed price of materials,
 or value of materials.
7. Date of commencement of work.
8. Is all of work completed; if not, how much?
9. Date of last item of work.
10. Date of commencement of furnishing materials.
11. Are all of the materials furnished; if not, how much?
12. Date of furnishing last materials.
13. Date of completion and acceptance of claimant's contract with contractor.
14. Were all the labor and materials actually used in the premises; if not, how much?
15. Amount claimed and interest.
16. Amount actually due claimant. Amount paid, credits and offsets.

To File Mechanic's Lien

17. Amount to grow due claimant.
18. If a blanket lien, state what amount went into each house.
19. Description of premises by street and number.
20. If a general assignment has been made by owner or party in interest, name and address of assignee.
21. Does claimant receive daily or weekly wages?
22. Proper party to verify lien?
23. Value or agreed price of materials actually manufactured for but not delivered to the real estate or the public improvement.
24. Explain possibility of lien being bonded.
25. Who is to pay for the services?

MUNICIPAL LIENS

In addition to above

26. Department or bureau having charge of the construction and name and title of officer having charge of funds applicable to the improvement.
27. Are there any credits and offsets? If so, what, and how much?
28. A description of the public improvement.
29. Date and description of the contract for the public improvement.
30. Name of proper party to verify and will he be available?

V

INFORMATION TO OBTAIN FROM CLIENT FOR THE PURPOSE OF DRAWING A DEED

Information it may be wise or necessary to obtain for the purpose of drawing a deed of real estate:

Full name of grantor and his residence; if conveying in representative capacity, full description of his office and authority.

Is grantor a citizen of full age and competent to convey?

If married, what is full name of wife, and is she of full age?

Is grantor to be described in deed as unmarried or widower?

Full name of grantee and residence.

If married, what is full name of wife of grantee?

Has grantor any divorced wife living?

Is grantee a citizen, of full age and competent?

Have any of the parties been divorced?

Date of deed.

Residence of purchaser. (In a city of over 200,000 inhabitants, Street and Street number must be stated in deed.)

Description of property by metes and bounds; section and block number and street number, liber and page of last deed. (See *Urbach v. Pye*, 124 App. Div. 587.)

What consideration to be expressed?

Full consideration must be expressed in deed by person conveying in representative capacity unless both grantor and grantee unite in a duly acknowledged certificate, showing what the real consideration is, in which case the consideration may be expressed nominally.

The purchase price.

How much payable on delivery of deed?

Any purchase-money mortgage to be drawn; if so, see information to be obtained on drawing mortgages.

Estate to be granted.

Is deed to be full covenant and warranty or bargain and sale or quitclaim?

When is the deed to be acknowledged and where?

 For Drawing a Deed

Is deed to contain a clause taking subject to mortgages, party-wall agreements, leases or lettings, tenancies, covenants running with land or any restrictions, exceptions or reservations? What special clauses to be inserted?

Any provision as to beam rights or party-wall agreements, leases or tenancies, encroachments or easements to be inserted? As to party-walls, see *Crawford v. Krollpfeiffer*, 195 N. Y. 185; 127 App. Div. 265.

As to easements, see *Landsberg v. Rosenwasser*, 124 App. Div. 559; *Korn v. Campbell*, 192 N. Y. 490.

Extra personal property clause.

Amount, time of payment, and rate of interest on existing mortgages. Is interest paid to date?

First mortgage and details.

Second and subsequent mortgages and details.

Who in possession and nature and extent of his tenancy?

Are there any open and notorious easements? — eaves and shutters.

Are there any restrictive agreements or covenants affecting the property?

Has there been an award in condemnation proceedings? (See *Matter of City of New York*, 195 N. Y. 527; 199 N. Y. 560.)

Has vendor or vendee married since signing contract to sell?

Where are abstracts, searches, survey, and policy of title insurance, deed into grantor?

Is there any survey? If no survey, order one at once according to possession. Deed sometimes reads subject "to any state of facts which an accurate survey would show."

Look out for survey variations. Has fence been rebuilt?

From whom was property acquired by seller, how, and when?

Any unpaid transfer tax? If obtained under will, is there a posthumous child? If acquired within three years by will or intestacy, have all debts been paid? (See § 2714, C. C. P.)

Have changes ever taken place in street line or names? (*Bauman v. Goldthorp*, 129 App. Div. 19.)

Necessary details to have policy of fire, plate glass and indemnity insurance changed at once.

Recording fees.

For Drawing a Deed

As to delivery, see *Hamlin v. Hamlin*, 192 N. Y. 164, and *Steibel v. Grosberg*, 202 N. Y. 266.

Recently seventeen forms concerning conveyances have been standardized. The adoption of these standard forms is not compulsory, but their use in the Register's Office of the County of New York is becoming general and their use is suggested. (See Form of Deed, p. 1144 *et seq.* See also Memorandum for Closing, Vendor and Vendee, p. 201, *et seq.*)

VI

INFORMATION TO OBTAIN FROM CLIENTS FOR THE PURPOSE OF DRAWING A MORTGAGE

Information it may be wise or necessary to obtain for the purpose of drawing a mortgage:

Full name of the mortgagor; his residence.

Is he a citizen, full age and competent?

If married, full name of his wife, and is she of full age?

Has mortgagor any divorced wife living?

Is he to be described as unmarried or widower?

If purchase-money mortgage, will mortgagor's wife join if desired?

Does mortgagee desire it?

Full name of the mortgagee; his residence. Is he of full age and competent?

Who is to go on the bond?

If mortgage to be executed by attorney, who is to prepare power?

If mortgage to be executed by attorney, examine authority.

Date of bond and mortgage.

Amount of the mortgage.

For what period of time mortgage is to run.

The rate of interest.

Interest days and periods.

Description of property by metes and bounds, section, block number and street number, and page and liber of last conveyance.

How many days tax and assessment clause?

Is there to be:

Receiver clause?

Gold clause?

Violation clause?

Provision as to payment of any future tax that the law may impose, *e. g.*, income tax?

Provision as to privilege of mortgagor to make part payment on account before maturity?

Provision that mortgage shall become due on actual or threatened demolition of premises, at option of mortgagee?

Subordination clause? (See *Londner v. Perlman*, 129 App. Div. 93, *aff'd* 198 N. Y. 629.)

For Drawing a Mortgage

- If mortgagor desires to sell portions in small lots see that mortgage contains clause that mortgagee shall release from time to time by payment of proportionate part of lien of mortgage on each block, lot or parcel, generally one-third more than lien of mortgage, and provide who shall pay for release and amount thereof.
- If not a first mortgage, arrange for clause making subsequent mortgage due ten days after default in payment of interest on any prior mortgage.
- Is it to be a purchase-money mortgage? If so, have bond and mortgage same date as deed and see that release clause is favorable to mortgagor, if so desired.
- If purchase money mortgage, insert "being the same premises conveyed to the said (*John Dolan*) by the said (*Frank Black*) and wife, by deed bearing even date with these presents, which are given to secure the payment of part of the purchase money of the said premises."
- When is the mortgage to be acknowledged and where?
- Who is to receive money, if some one other than mortgagor; who to have written authorization, and who to draw power? (See 190 N. Y. 121; 167 App. Div. 210.)
- Who is to make affidavit of title?
- Is there to be brokerage; broker's address and who is to pay the brokerage and how much?
- If there is a survey, see if there are any variations.
- Where is abstract, last deed into mortgagor, policy of title insurance, and survey?
- Mortgage recording tax and other recording fees.
- Necessary details to have policy of fire, plate glass and indemnity insurance changed at once.
- Will party have certified check at closing (to order of himself)?
- Amount of prior liens.
- Are there any prior mortgages; if so, names, dates, amounts, due dates, etc., when last interest was paid?
- Are any estoppel certificates to be obtained?
- Are there to be any satisfactions of mortgages or assignments of mortgages to be obtained before closing?
- Any *lis pendens*, mechanics or other liens to be cancelled before closing?
- Are there any unpaid taxes, assessments or water rates; if so, how much?

For Drawing a Mortgage

Will client obtain tax bills?

Any authorizations to pay taxes, assessments, water rates, mortgages, judgments or mechanics' liens to be drawn for closing?

Are there any judgments against mortgagor; if so, are satisfactions of such judgments or assignments to be obtained before closing?

Are there any proposed widenings or other assessment proceedings?

Are condemnation proceedings contemplated or has an award been made?

Are there pending any actions against abutting railroads, elevated or otherwise?

Restrictions in title.

Party-wall agreements.

Leases or lettings; see that leases have clauses subordinating them to any future mortgages.

Tenement house, building department and other violations.

Inquire if any chattel mortgages on fixtures or material or any such purchased by conditional sale.

Who is in possession, and nature and extent of his tenancy?

Any open or notorious easements?

How long has mortgagor owned premises, and how did he acquire same. If acquired by will, is there posthumous child?

If acquired within three years by will or intestacy, have all debts been paid? (See §§ 2702, 2714, C. C. P.)

Assessed value of property. Amount of equity.

When and where is transaction to be closed?

Customarily at office of attorney for mortgagee.

Amount of attorney's bill for services?

Repairs, alterations, new fire escapes and stairs.

Recently seventeen forms concerning conveyances have been standardized, including Assignment of Mortgage, Release of Mortgaged Premises and Satisfaction of Mortgage. The adoption of these standard forms is not compulsory, but their use in the Register's Office of the County of New York is becoming general and their use is suggested. (See Form of Mortgage, p. 1251. See Memorandum for Closing, Mortgagor and Mortgagee, p. 210, *et seq.*)

VII

FACTS TO ASCERTAIN BEFORE DRAWING CONTRACT TO SELL REAL PROPERTY

(When acting for vendor)

Before signing the contract to sell real estate, it may be wise to ascertain the following facts or some of them:

Date of contract.

Name and address of vendor.

Is he a citizen, of full age and competent?

If agent is to sign contract for purchaser see to it that he is given proper authority.

Will wife of grantor join in deed, her full name, and is she of full age?

Has grantor been divorced? If so, examine proceedings and judgment.

Any marriage settlements?

Will wife of grantee join in purchase-money mortgage and is it desired?

Name and residence of the vendee.

(In a city of over 200,000 inhabitants, street and street number must be stated in deed.)

Is vendee of full age and competent?

Is the purchaser a responsible person?

Description by metes and bounds, street number, section and block number, liber and page of last deed.

Use description in last deed unless changes in street lines have taken place. (See *Urbach v. Pye*, 124 App. Div. 587.)

The purchase price.

Amount to be expressed in deed:

Full consideration should be expressed in deed by person conveying in representative capacity unless both grantor and grantee unite in a duly acknowledged certificate, showing what the real consideration is, in which case the consideration may be expressed nominally.

How much to be paid on signing contract. (See 192 N. Y. 113; 207 N. Y. 407.)

Contract to Sell Real Property

How much payable on delivery of deed.

(See that the earnest money is more than sufficient to cover brokerage. Earnest money should be at least two per cent of the purchase price.)

Is deed to be a full covenant and warranty, quitclaim or bargain and sale? * When and where to be executed? (See *Emerick v. Hackett*, 192 N. Y. 162.)

Avoid clause that title shall be satisfactory to third parties. (See *Allen v. McKeon*, 127 App. Div. 277; *Title G. & T. Co. v. Brown*, 205 N. Y. 486.)

Is there to be an extra personal property clause?

Is any provision to be inserted as to parquet floors, gas ranges, heaters, machinery, partitions or fixtures?

What special clauses to be inserted?

Is deed to contain a clause taking subject to party-wall agreements, leases or lettings, tenancies, covenants running with land? As to party-walls, see *Crawford v. Krollpfeiffer*, 195 N. Y. 185, and *Driscoll v. Carroll*, 127 App. Div. 265.

Is conveyance to be "subject to" the mortgages or are they to be "assumed" by the purchaser?

Any exceptions or reservations to be inserted?

Where are policies of fire, indemnity and plate glass insurance and for what amount?

Any provision to be inserted as to on whom loss falls in case of fire before closing? (*Sewell v. Underhill*, 197 N. Y. 168.)

Have abstract of title, policy of title insurance, deeds and survey.

Whether there is any variation in survey. (If no survey exists, have one made before signing contract, so that description in deed will cover no more than survey in possession and deed to seller.)

What broker brought about sale, his address and who is to pay him and how much, and is any clause to be put in contract covering same, *e. g.*, brokerage to be paid when and if title passes only? (See 61 Misc. 260; 170 App. Div. 502.)

*Recently seventeen forms concerning conveyances have been standardized. The adoption of these standard forms is not compulsory, but their use in the Register's Office of the County of New York is becoming general and their use is suggested.

Contract to Sell Real Property

Have water meter read. (*Mandel v. Weschler*, 198 N. Y. 518.)

Who is in possession? Nature and extent of his tenancy.

Any open and notorious easements?

As to easements, see *Landsberg v. Rosenwasser*, 124 App. Div. 559, and *Korn v. Campbell*, 192 N. Y. 490.

Has any change ever taken place in street lines, name or grades?

How long has the intended grantor owned the premises?

How did he acquire the same? If obtained under will, is there a posthumous child? If acquired within three years by will or intestacy, have all debts been paid? (§§ 2702, 2714, Code.)

Are condemnation or assessment proceedings contemplated or pending, or has award been made? (See *Matter of City of New York*, 138 App. Div. 203, *aff'd* 199 N. Y. 560; *Matter of City of New York*, 195 N. Y. 527.)

Amount and details of first mortgage, and when last interest paid, and if past due whether called or not.

Amount and details of second and subsequent mortgages and when last interest paid, and if past due whether called or not.

Has any of the principal been reduced by payments on account?

If payments on mortgages have been made will purchaser require an estoppel certificate?

Is there to be a purchase-money mortgage? If so, obtain full particulars and who is to go on bond. (See p. 18.) And provide for payment for drawing and recording deeds and mortgages and payment of recording tax.

Be prepared to charge your client with the accrued interest on any mortgage, with rents collected and collect from purchaser the value of the first and other insurance pre-paid, gas range rents and similar charges, collect for drawing purchase money bonds and mortgages and the expense of recording same.

If special clauses in purchase-money mortgage are essential, provision for the form of the mortgage to be given should be made in the contract. If a purchase money mortgage is taken back provide that interest shall be paid half yearly,

 Contract to Sell Real Property

make purchaser agree to pay as part of the consideration for the contract and at the time of the delivery of the deed, the cost of drawing and recording the mortgage, including the mortgage tax thereon. (See *Londner v. Perlman*, 198 N. Y. 629.)

If conveying subject to mortgage, see *Weisberger v. Wallach*, 124 App. Div. 382, and agree to sell subject to the mortgage and all the conditions therein contained as the same is recorded.

Is there to be a clause to apportion or sub-divide the mortgage so as to make separate liens?

What liens other than mortgage on the premises?

Have all taxes, assessments and water rates been paid? If not, amounts due. (See *Mandel v. Weschler*, 198 N. Y. 518.)

Will client obtain tax, water and other bills, with interest computed; and who is to pay same? (See *Mandel v. Hess*, 57 Misc. 240.) The duty is upon the vendor and he cannot insist upon same being deducted from the purchase price. (*Berger v. Crist*, 121 App. Div. 483.)

Leases or lettings.

Are there any covenants or restrictions on title which would justify rejection thereof?

Any mechanics' liens?

Are there any party-wall agreements?

Encroachments, beam rights, foundation extensions, eaves and shutters, sewer and drain rights.

Tenement House, Health, Fire, Labor and Building Department and other violations.

Are there any agreements with telephone and telegraph companies or leases for signboards? Or rights of way?

Rights against abutting railroads, elevated or otherwise.

If vault exists have fees been paid city?

Memorandum of rents paid and unpaid and are rents to be apportioned?

Is there to be apportionment of insurance?

Electric, steam, elevator, janitor and minor service.

Mortgage recording tax and other recording fees.

Inquire if any chattel mortgages on fixtures or material or any such purchased by conditional sale.

Contract to Sell Real Property

- For what purpose the property has been used (§ 42, Liquor Tax Law; Distilling Laws, U. S.).
- Contemplated improvements in vicinity.
- Amount of income property yields.
- Average cost of annual repairs.
- What is assessed value of property?
- What mortgages were formerly on the premises?
- If either party a corporation, have certified a copy of resolution and certificate of officers.
- Closing of title, date and place, customarily at office of attorney for seller.
- Are improvements to be in same condition as upon signing contract?
- Is time to be the essence of the contract? (196 N. Y. 32.)
- If mortgages are to be paid off or assigned at closing, see § 290 of Real Property Law.
- See as to lien for amount paid on contract, *Elterman v. Hyman*, 192 N. Y. 113; 207 N. Y. 407.
- As to delivery of deed, see *Hamlin v. Hamlin*, 192 N. Y. 164, and *Stiebel v. Grosberg*, 202 N. Y. 266.
- As to provision that no action for specific performance shall lie, see *Wadick v. Mace*, 191 N. Y. 1.
- As to kind of title vendee entitled to receive, see *Cerf. v. Diener*, 210 N. Y. 156.
- In the City of New York, taxes become a lien, first half on the first day of May and second half on the first day of November. Laws of 1916, Chap. 17.
- The vendee has the equitable title, the vendor holding the legal title merely as security for the payment of the purchase money.
- As to remedies of vendee, see *Davis v. Rosenzweig R. Co.*, 192 N. Y. 128. And see *Zeiser v. Cohen*, 207 N. Y. 407.
- If possible always insert in the contract that the sale is subject to any state of facts which an accurate survey would show, covenants of record and to leases and lettings.
- If purchaser is unwilling to take subject to any state of facts which an accurate survey would show, then make a provision that no variation exceeding inches or or acres will affect the marketability of the title.

Contract to Sell Real Property

If the property is sold by area, make a provision that a deficiency not exceeding a fixed amount shall not constitute any objection and that if the deficiency exceeds that amount, a pro rata allowance will be made on account of the purchase price.

In New York City see how property is affected by new Zone System.

VIII

FACTS TO ASCERTAIN BEFORE DRAWING CONTRACT TO BUY REAL PROPERTY

(When acting for vendee)

Date of contract.

Name and address of vendor.

Is he a citizen of full age and competent?

If agent is to sign contract for owner, his name and investigate his authority.

Will wife of grantor join in deed, her full name and is she of full age?

Will wife of grantee join in purchase-money mortgage and is it desired?

Has grantor been divorced? If so, examine proceedings and judgment.

Name and residence of the vendee.

(In a city of over 200,000 inhabitants, Street and Street number must be stated in deed.)

Is he of full age and competent?

Description by metes and bounds, street number, section and block number, liber and page of last deed. Use description in last deed unless changes in street lines have taken place. (See *Urbach v. Pye*, 124 App. Div. 587.)

The purchase price.

Amount to be expressed in deed. Full consideration should be expressed in deed by person conveying in representative capacity unless both grantor and grantee unite in a duly acknowledged certificate, showing what the real consideration is, in which case, the consideration may be expressed nominally.

How much to be paid on signing contract?

How much payable on delivery of deed?

See that there is sufficient equity before payment upon signing of contract. Provide that earnest money and expense of examination shall be a lien.

Is deed to be a full covenant and warranty, bargain and sale or quit-claim? * When and where to be executed? (See *Emerick v. Hackett*, 192 N. Y. 162.)

*Recently seventeen forms concerning conveyances have been standardized. The adoption of these standard forms is not compulsory, but their use in the Register's Office of the County of New York is becoming general and their use is suggested.

Contract to Buy Real Property

Is there to be an extra personal property clause?

What special clauses to be inserted?

If title is to be satisfactory to third party, provisions should be made in contract. (See *Allen v. McKeon*, 127 App. Div. 277; *Title G. & T. Co. v. Brown*, 205 N. Y. 486.)

Is deed to contain a clause taking subject to mortgages, party-wall agreements, leases or lettings, tenancies, covenants running with land? As to party-walls, see *Crawford v. Krollpfeiffer*, 195 N. Y. 185; *Driscoll v. Carroll*, 127 App. Div. 265.

As to easements, see *Landsberg v. Rosenwasser*, 124 App. Div. 559; *Korn v. Campbell*, 192 N. Y. 490.

Taking subject to mortgage, see *Weissberger v. Wallack*, 124 App. Div. 382.

Any exceptions or reservations to be inserted?

Where are policies of fire, indemnity and plate glass insurance and for what amount?

Where is abstract of title, policy of title insurance and last deed to grantor?

If no survey exists, have one made before signing contract so that description in deed will cover all the property in possession. If purchase subject to any state of facts which an accurate survey would show, try to arrange to have the survey made before the contracts are exchanged.

What broker brought about sale, his address, and who is to pay him and how much, and any clause to be put in contract covering same? (See 61 Misc. 260; 170 App. Div. 502.)

Have water meter read. (*Mandel v. Weschler*, 198 N. Y. 518.)

Inquire from vendor who is in possession; nature and extent of his tenancy. Any open and notorious easements?

As to easements, see *Landsberg v. Rosenwasser*, 124 App. Div. 559; *Korn v. Campbell*, 192 N. Y. 490.

Has any change ever taken place in street lines or name?

How long has the intended grantor owned the premises?

How did he acquire the same? If obtained under will, is there a posthumous child? If acquired within three years by will or intestacy, have all debts been paid? (But see §§ 2702, 2714 C. C. P.)

Contract to Buy Real Property

Are condemnation or assessment proceedings contemplated or pending, or has award been made? (See *Matter of City of New York*, 138 App. Div. 203; *aff'd* 199 N. Y. 560; *Matter of City of New York*, 195 N. Y. 527.)

See that the terms of any mortgages referred to in the contract are explicit, and if necessary examine the record for the details.

Amount and details of first mortgage, and when last interest paid and if past due whether called.

Amount and details of second and subsequent mortgages, and when last interest paid and if past due whether called.

Be prepared to collect the accrued interest on any mortgage, with rents collected and to pay to seller the value of the fire and other insurance prepaid, gas range rents and similar charges, to pay for drawing purchase money bonds and mortgages and the expense of recording same.

Has the principal been reduced by payment on account; if so, require estoppel certificate.

Is conveyance to be subject to the mortgages, or are they to be assumed by the purchaser?

If prior mortgages require vendor to provide subordination agreement?

Is there to be a purchase-money mortgage? If so, provide full particulars and who is to go on bond. (See p. 18.)

If special clauses in purchase-money mortgages are essential, provision for the form of the mortgage to be given should be made in the contract. (*Londner v. Perlman*, 198 N. Y. 629.)

If purchase-money mortgage to be given, see that release clause is favorable to mortgagor, *e. g.*, if purchaser desires to sell portions in small lots, see that contract provides that the mortgage shall contain release clause favorable to purchaser enabling purchaser to sell lots from time to time, by payment of proportionate part of lien of mortgage on each block, lot or parcel, generally one-third more than lien of mortgage. Who shall pay for drawing of release and amount thereof?

Is there to be a clause providing for apportionment or subdivision of mortgage, so as to make separate liens?

What liens other than mortgage on the premises?

Contract to Buy Real Property

Is there to be any clause as to building, streets, sidewalks or sewers? (See 210 *N. Y.* 467.)

Is any provision to be inserted as to parquet floors, gas ranges, heaters, machinery, partitions or fixtures?

Have all taxes, assessments, and water rates been paid? If not, amounts due.

Leases and lettings.

Are there any covenants or restrictions on title which would justify rejection thereof?

Any mechanics' liens?

If any partially constructed building on premises provide that vendor will produce proof of payment of union workmen or any members of any Building Trades Association, otherwise payment may have to be made by vendee before he can secure workmen.

Are there any party-wall agreements?

Encroachments, beam rights, foundation extension, eaves and shutters, sewer and drain rights, party sewers.

Stipulate that vendor convey the property clear of all Tenement House, Health, Fire, Building, Labor and other Governmental violations, at least down to the time of the date of the contract.

Is vendee to be furnished on closing with certificates of search made by the Departments of Buildings and the Tenement House Department of the City of New York, showing that said buildings do not violate the building laws or the Tenement House Law and that there are no violations of record against said building.

Are there any agreements with telephone and telegraph companies or leases for signboards?

Rights against abutting railroads, elevated or otherwise.

Provide that all vault space used in connection with the building has been lawfully taken and has been paid for.

Memorandum of rents paid and unpaid, and are rents to be apportioned?

Is there to be apportionment of insurance?

Electric, steam, elevator, janitor and other minor service.

Mortgage recording tax and other recording fees.

How old is building?

Contract to Buy Real Property

Inquire if any chattel mortgages on fixtures or materials or any such purchased by conditional sale and require title free from same.

For what purpose the property has been used (§ 42 Liquor Tax Law; U. S. Distillery Laws).

Contemplated improvements in vicinity.

Amount of income property yields. Average cost of annual repairs.

What is assessed value of property?

What mortgages were formerly on the premises?

If either party a corporation have certified copy of resolutions and certificate of officers.

Closing of title, date and place, customarily at office of attorney for seller.

Any special agreement as to securing possession?

Is time to be the essence of the contract? (196 N. Y. 32.)

As to delivery of deed, see *Hamlin v. Hamlin*, 192 N. Y. 164, and *Stiebel v. Grosberg*, 202 N. Y. 266.

Vendee is not compelled to allow deduction from purchase price on account of unpaid water rents and taxes. They must be paid before closing. (*Mandel v. Hess*, 57 Misc. 240.)

In the city of New York, taxes become a lien, first half on the first day of May, and second half on the first day of November. (Laws of 1916, chap. 17.)

The vendee has the equitable title, the vendor holding the legal title merely as security for the payment of the purchase money.

As to remedies of vendee, see *Davis v. Rosenzweig R. Co.*, 192 N. Y. 128, and *Zeiser v. Cohen*, 207 N. Y. 407.

As to provision that no action for specific performance shall lie, see *Wadick v Mace*, 191 N. Y. 1.

Any provision that improvements are to be in same condition as when signing contract.

Unless you know the vendor or unless he is vouched for strongly, do not agree to pay the earnest money to him but provide that the same shall be deposited in a bank or trust company until the closing of the contract; the incumbrances against the property may be greater than the amount of the purchase price.

IX

MEMORANDUM FOR DRAWING CERTIFICATE OF INCORPORATION AND BY-LAWS

- Under the laws of what State is company to be organized?
Name of proposed company, and is any portion prohibited by statute?
It is prudent to telegraph or write Secretary of State and ascertain whether proposed corporate name is usable.
Ascertain if there has been filed in County Clerk's office certificate as to use of similar name.
Objects or purposes, *i. e.*, nature of business to be carried on.
Names of incorporators, residence, post-office address of each, number of shares each is to take and citizenship of incorporators.
Number of directors, names and residences of first directors and their post-office addresses.
Location of principal office.
Place or places where business is to be carried on.
Duration of company's existence.
Amount of authorized capital stock.
Number of shares and par value of each.
Amount of preferred stock and par value of each.
Preferred stock entitled to cumulative or non-cumulative preferred dividend at the rate of what per cent. per annum, whether payable yearly, half-yearly or quarterly, and on what days.
Are preferred stockholders entitled to any further share of profits?
In what manner is preferred stock preferred in case of winding up?
Is preferred stock to be subject to redemption by the company; if so, at what price (not less than par), when and how?
Are stockholders, common or preferred, to have any special rights, or to be restricted as to voting? Is provision to be made for cumulative voting?
Amount of debentures or bonds and terms of same.
Is stock to be issued for cash or property?

Memorandum for Certificate and By-Laws

Number of shares to be issued for cash and number to be issued for property. If any to be issued for property state amount, value of property and give detailed description of same.

To whom and in what amounts is stock to be issued?

Amount of capital with which company is to commence business.

Any special limitations as to the business, powers or obligations of the officers of the company.

Is it proposed to hold stock of other companies?

By whom will property be conveyed or transferred to the company?

If corporation is to take over existing business, on what day shall it take possession and commence business?

Is lease of premises to be assigned to the company?

Are any special contracts to be drawn; if so, state details?

Names of president, vice-president, secretary and treasurer.

Salaries to be paid officers.

Is executive committee of directors to be provided for; if so, how many; powers and duties; how elected, by directors or stockholders; if appointed is president to be *ex officio* member?

Does company want clause giving power to take and hold real estate in and out of the State of organization?

Is power to be generally in the stockholders or in the directors?

What shall constitute a quorum of stockholders?

Are there to be any restrictions as to the residence of the parties?

Inspectors of election to be appointed or elected and their names.

Are any two offices to be held by the same person?

Is treasurer to act without a bond?

Is provision to be made that less than a quorum of stockholders may adjourn?

Are directors to be stockholders?

Any restrictions upon sale of stock?

Fiscal year of the company, day and hour of annual meeting of stockholders, and where to be held.

What notice to be given of annual meeting?

Memorandum for Certificate and By-Laws

By whom may special meetings of stockholders be called?
Notice required to be given of special meeting of stockholders.

When are regular directors' meetings to be held?

By whom are special meetings of directors to be called?

Notice required to be given of special meetings of directors.

Where are directors' meetings to be held?

Is provision to be made for holding directors' meetings outside of State?

Number of directors to constitute a quorum.

Are directors to have power to amend the by-laws, or stockholders only?

Name of bank where account is to be kept.

Who is to sign and countersign notes and checks, make purchases, contracts, etc., and what limitations, if any, are to be placed thereon?

Stock certificates to be signed by president, and what other officer?

Are directors to be paid for attending meetings?

When is dividend to be declared?

Description of seal, when books closed, what books to be ordered.

When and where do incorporators intend to execute and acknowledge certificate of incorporation?

X

GUIDE FOR COMPLETING ORGANIZATION OF A CORPORATION

1. Certified copy of certificate of organization.
2. Copy of organization tax receipt.
3. Waiver of notice and call of meeting.
4. Proxies.
5. Minutes, meeting of subscribers.
6. Subscription list of stock.
7. By-laws and copy.
8. Ballots for directors and officers and inspectors of election.
9. Proposition from promoters.
10. Minutes, meeting of board of directors, first and second meetings.
11. Secretary's oath (if required).
12. Treasurer's bond (if any).
13. Report of treasurer.
14. Acceptance of the proposition of promoters.
15. Book of stock certificates, common and preferred.
16. Seal press and seal.
17. Seal wafers.
18. Stock ledger.
19. Stockholders' record and transfer book.
20. Minute book for stockholders.
21. Minute book for directors.
22. Bill of sale.
23. Deed.
24. Assignment of outstanding accounts and contracts.
25. Assignments or licenses of patents and assignments of copy-rights.
26. Any powers of attorney of absentees.
27. Certificate of payment of one-half capital stock.
28. List of directors and officers for filing in other States.
29. Statement and designation of person on whom process can be served for filing in other States.
30. Papers to obtain certificate to do business in other States.
31. Cash, or certified check to be turned over to new corporation.
32. If foreign corporation, certificate, etc., for New York license fee and certificate of authority.
33. Fees.

Completing Organization

34. Voting trust deed.
35. Trust certificates.
36. Corporate calendar.
37. Letter to new corporation.
38. Transfer of good will.
39. Receipts for property and cash conveyed to corporation.
40. Notices of meeting.
41. Waiver of notice of assessment.
42. Resolution to trust company.
43. Resolution to bank.
44. Names of inspectors, and have they been notified?
45. Oath and report of inspectors.
46. Contracts of former owners not to engage in business.
47. Certificate upon payment of installment.
48. Notification of persons absent at election.
49. Answer of such person.
50. Appraisement certificate and report.
51. Resolution for trust company authorizing mortgage, or deed of trust, bonds.
52. Accountant's certificate.
53. Affidavits of service.
54. Admission and waiver.
55. Lease — assignment of lease.
56. Statement and list of officers.
57. Transfer insurance policies.
58. Papers for Custom House.
59. Paper for warrants on Sub Treasury.
60. Consent of the contracting parties to change of obligor on important contracts.
61. Stock transfer stamps.
62. Internal Revenue Stamps.
63. Resignation of Dummy Directors.
64. Assignment in blank of Stock of dummy directors.
65. Certificate for State Comptroller.
66. If a mortgage of real property to be taken over from another corporation, get consents from two-thirds of stockholders of record.
67. If stock in trade of individual taken, is notice to creditors necessary? (Sect. 44, Personal Property Law, as amended by the L. 1914, ch. 507; 93 *Misc.* 353; *Klein v. Maravelas*, 94 *Misc.* 458.)
68. Certificate under § 275 (a) Tax Law.

XI

HINTS FOR DRAWING A PARTNERSHIP AGREEMENT

Agree to become and do become partners.
Share in profits and losses.
Duration, time, notice of continuance or dissolution.
Name, place, and survivors.
Does either partner own the real estate?
Capital.
Additional capital.
Interest on capital.
Profits, how to be disposed of.
Losses, how apportioned.
Capital, how distributed if intact.
Capital, how distributed if not intact.
Guaranty of profits to one partner.
How profits to be drawn.
Profits of one year not to be taken into account as to losses
in following years.
Attention to business.
Salary to one partner before profits.
Not to engage in any other business.
How checks signed.
No firm paper to be made.
Not to go on bonds or undertakings.
Limits of power of partners as to purchases, etc.
Hiring of clerks.
To give information.
Trade secrets. Trade names and trade marks.
To pay promptly private debts, effect of failure.
Advances to firm when to be made and to draw interest.
Books of accounts.
Annual accounts.
Provisions for admission of successors.
Decision of majority binding.
Death not to dissolve.
Retirement.
Allowance for good will upon death. Use of trade names.
Retiring partner not to carry on business.
No survivorship.

Partnership Agreement

Life or accident insurance for benefit of firm or partner.
Dissolution if losses amount to given proportion of capital.
Provision in case of death } Share of deceased
Outstanding contracts } purchased by
Compensation of survivors. } survivors.
Power of expulsion.
Arbitration clause.
Any certificates to be filed in County Clerk's office as to names.
After signing agreement of partnership, see that transfer of insurance is at once effected.
Publish notice of partnership.
Who is to pay for drawing articles of partnership?
See Letter to Surviving Partner, p. 193.

XII

SUGGESTIONS FOR PREPARATION FOR TRIAL

Many trial lawyers have found it a mechanical aid to obtain a 30-page folder or jacket with indented finger index, each page being numbered from 1 to 30, and place under the proper number the papers to be used at the trial. Thus any paper may be easily found at the trial without searching through a mass of documents, and when not in use replaced in its proper place.

In connection with such a folder or jacket the following, used as an index of contents, has been found useful.

1. Arrangement of dates.
2. Conference with witnesses.
3. Correspondence, chronologically arranged and copies thereof.
4. Defense's case, witnesses, all things relative to opponent's case and memo. of defendant's authorities.
5. Examination before trial.
6. Interest. (173 N. Y. 417; 176 N. Y. 298; 181 N. Y. 14; 213 N. Y. 599; 218 N. Y. 390.)
7. Jury list and jury fee.
8. List of exhibits, books, papers, etc., needed at trial.
9. List of papers on file in public offices to be produced at trial.
10. List of law books needed at trial.
11. Memorandum for opening.
12. Notice to produce and affidavit of service or admission.
Order under §§ 866, 867 of Code. See p. 638.
13. Notice of trial and affidavit of service.
14. Orders and motion papers.
15. Original pleadings and bill of particulars, orders affecting.
16. Pleadings marked for the court.
17. Questions for jury.
18. Requests to charge.
19. Trial brief of law.
20. Trial brief of fact.
21. Things to be attended to.
22. Witnesses, addresses and subpoenas and subpoenas *duces tecum*.
23. Books of accounts produced by subpoena *duces tecum* or order
timely notice — § 866, Code.

Preparation for Trial

24. Hypothetical questions.
25. Surveys, models, photographs and other exhibits.
26. Necessary certified copies of documents.
27. Reports of investigators. Statements of witnesses.
28. Referee's report.
29. Reminders for cross-examination.
30. Memo. for motion to dismiss or for judgment.

4

First. When the examination is before a referee, before proceeding to take any evidence, he should subscribe to the following oath:

IN THE MATTER OF PROCEEDINGS
SUPPLEMENTARY TO EXECUTION OF
(*JOHN FRENZEL,*)
Plaintiff and Judgment Creditor,
against
(*WILLIAM HOLMES,*)
Defendant and Judgment Debtor.

(HENRY PATTERSON.)

(*OLIVER HAY,*)

Notary Public, (N. Y.) Co.

Second. The referee should keep a record of the proceedings taking down the testimony in narrative form, if no stenographer is available, except where objection is made to a question or where the witness persists in making evasive replies, when the question and the objection, with the ruling thereon, or the unsatisfactory answer of the witness should be set forth at length, so that a motion to compel a direct answer may be made.

When the examination is not before a referee, a record of the examination is taken down by the attorney for the judgment creditor.

Record of Examination

Following is a convenient form for the record of the proceedings before a referee:

Examination of (*William Holmes*,) the judgment debtor herein, in supplementary proceedings, pursuant to an order annexed hereto, dated (*March 10, 1916*) signed by Honorable (*Charles L. Guy*,) a Justice of this Court, requiring said debtor to appear before (*Henry Patterson*,) Esq., the referee therein appointed.

Present: The Referee.

The Judgment Debtor.

(*RALPH HAYNES*,) ESQ.,

For the Judgment Creditor.

(*DODSON & JAMES*,) (Mr. James),

For the Judgment Debtor.

The following oath was subscribed by the referee:

(Attach oath as above.)

Third. The judgment debtor is sworn either by the judge or the referee, upon the Bible or by raising his right hand.

"You do solemnly swear that you will true answers make to such questions as may be put to you concerning your property, so help you God."

(*William Holmes*,) the judgment debtor, being first duly sworn, true answers to make to such questions as might be put to him concerning his property, testified as follows: * * *

Fourth. A wide scope is allowed in the examinations, and all questions, except such as are grossly irrelevant to the inquiry, are allowed.

The judgment debtor should be examined along the lines suggested in the next paragraph and inquiry concerning each special kind of property should be completed before proceeding to the next, unless it becomes advisable to have a receiver appointed in haste. In that case, it may be well to confine the examination to the property disclosed, secure the appointment of the receiver and complete the examination at subsequent hearings, if need be.

Fifth. The judgment debtor should be examined on the following points:

1. If there are any suits, actions, or legal proceedings of any kind against you pending and undetermined, state the full particulars as to each.

Questions to Ask

2. Are there any judgments on record against you? What amount and where? Have payments been made on account thereof by you or by any third party for you? By what person? Was satisfaction recorded? Why not?
3. Are supplementary proceedings on any of these judgments pending against you?
4. Has any judgment creditor's action been commenced against you?
These last two inquiries are necessary to sustain an application for a receiver.
5. Have you any interest in real estate in this state or elsewhere? Are you entitled to any reversion, remainder, or contingent interest in real estate; or is any real property held in trust for you? Do you own any leasehold or have you any interest in any lease of real property? Do you lease any real property? Have you a lien or any interest in or under a lien on real property?
6. Have you any interest under any will or deed of trust? Have you recently received any money or property under any will by inheritance? How was same disposed of?
7. What property have you in this State, real or personal? Have you made any transfers of same and to whom? State circumstances.
8. What property, real or personal, have you outside the State? Give description and location.
9. Have you any mortgages on real or personal property or other investments? Any stock, bonds, scrip, dividend certificates, interest coupons, certificates of deposit, promissory notes, drafts, checks?
10. Have you any interest in any pension, patent, copyright, or invention, or in any royalties?
11. Do you own a seat in any stock, produce, cotton, or other commercial exchange?
12. Have you any right or interest or any prospect of pecuniary advantage under any contract or any interest in any suit in the courts of this or any other State, or in the federal courts?
13. Are there any judgments in your favor in any action by or against you? Have any judgments been assigned to you?
14. Are you a plaintiff in any action now pending in any court?

Questions to Ask

15. Have you any insurance on your life? To whom was same made payable? When were the beneficiaries changed?
16. Are you the beneficiary under a policy upon the life of any other person?
17. What property did you have at the time (mentioning date) when the debt for which this judgment was secured was contracted? Trace the disposition of this property.
18. Endeavor to disclose what amounts the debtor has received during the past sixty days.

Unless he shows that he is a householder, and that his earnings for sixty days previous to the service of the order are necessary for the support of his family, they may be reached.

Try to make the witness talk of himself, his family, his business, how he lives, what he lives on and what his prospects are? Follow him closely in all his statements, and trace any disposition of his property he has made.

If he is endeavoring to conceal property it will be difficult for him to avoid inconsistencies and contradictions in a falsehood covering any protected period of his life.

The following questions are suggested for this purpose:

Where do you live? How long have you lived there?

How much do you pay for rent, board, services, etc.?

Are you a member of any club? Dues paid?

What salary or income have you?

When did you last receive your salary?

Have you any uncollected debts or other money coming to you?

What is your occupation? Nature of employment?

Are you a member of a firm? What is its business and what are its debts?

Are you married? Have you a family? How large?

How many are dependent on you?

With whom do you live?

What money have you received within the last sixty days from any source?

What have you done with it?

Have you a bank account?

When did you make your last deposit?

When did you draw your last check?

When did you have your bank book balanced?

Questions to Ask

Have you anything in pawn?

Do you own or rent the place where you live?

Who owns the furniture in it? What does it consist of?

Have you a watch, jewelry, piano, horses, carriages, motor vehicles, paintings; any silverware, or curios.

Have you a library?

Have you a collection of coins or antiques?

Have you made a will?

Have you paid any taxes or assessments? To what amount?

Have you received any checks? How did you get them cashed?

What money have you spent since the service of this order?

Had you at the time of the service of this order any rights, real, or personal property, money, debts, claims mortgages, leases, choses in action, judgments, insurance, watches, jewelry, checks, notes, bills of exchange, bonds, stocks, or certificates; any interest in a contract, patent, copyright, invention or royalties, which you are not now possessed of, or in which you now have no interest, or a lesser interest?

Sixth. If the judgment debtor is not endeavoring to conceal assets, the foregoing examination should be completed in two hours, or less, and should disclose any property the debtor may have, or compel him to perjure himself in order to conceal it. Whenever property is disclosed or hinted at, more particular examination should be gone into to ascertain its amount and location.

Seventh. If adjournment are necessary, have them noted on a separate sheet of paper, in consecutive order, and dated as of the adjourned day, each adjournment signed by the judgment debtor, and initialed by the judge or referee, and attach same to the original order, so that the record may at all times be complete and ready to file. You are thus prepared to ask for the appointment of a receiver at any time or to make a motion to punish for contempt.

Eighth. Have the testimony taken at each examination signed by the judgment debtor, or witness, and sworn to before the referee or judge before proceeding to the next

Report of Referee

examination. In this way the witness may be prevented from changing his testimony when his subsequent examination shows the materiality of what he has already testified to.

Ninth. When the examination is taken before a referee, upon its completion, his report is made up. This consists of the narrative record of the testimony, subscribed and sworn to by the judgment debtor, and any other witness, set forth according to the form given above, and the original order with adjournments noted thereon. No findings or recommendations are included, but the following should be indorsed upon the report.

Tenth. See Code, § 2467 as to filing order appointing receiver, and bond with clerk of county where judgment roll or the transcript of the judgment is filed.

SUPREME COURT,
(*New York*) County.

IN THE MATTER OF SUPPLEMENTARY
PROCEEDINGS.

(*JOHN FRENZEL,*)

Judgment-Creditor,

vs.

(*WILLIAM HOLMES,*)

Judgment-Debtor.

To the (*Supreme*) Court (*of the State of New York*:)

I, (*Henry Patterson,*) the referee duly appointed by the annexed order in supplementary proceedings to take and certify the examination of (*William Holmes,*) the judgment debtor, do hereby certify that the annexed pages contained a full, true, and accurate report of said examination, and the whole of it.

Dated (*New York, April 15, 1916*).

Respectfully submitted,

(*HENRY PATTERSON.*)

See Forms, p. 696, *et seq.*

XIV

SUGGESTED LINES OF INQUIRY WHERE QUESTION OF PERSON'S DOMICILE OR RESIDENCE IS INVOLVED

Where evidence to establish domicile or residence of a party is required, very helpful bits of evidence may often be uncovered by investigating along the following lines:

As party to legal documents, how described, e. g.

Complaints.

Affidavits.

Petitions.

Mail addressed.

Clubs.

City, business, telephone, partnership and club directories.

Relatives and family tree.

Positions, political or otherwise, held by: Requiring residence.

Burial grounds.

Family bible, where kept.

Which home kept open all year.

Where did father live?

Does he import, custom house documents?

Has he given power of attorney?

Has he registered bonds?

Marriage certificate.

Birth certificate of children.

Other certificates in bureau of vital statistics.

Papers in office of cemetery company.

School and college records of children.

Regimental records.

Subscription to certificate of incorporation.

Did he ever serve summons?

Sheriff's jury.

Application for admission to bar.

Masonic order or fraternity.

License to do business, trade or profession.

Lives, actually.

Owns house.

How recited in deeds.

How recited in mortgages.

Suggested Inquiries

Passports.
Bank account, where.
Bank account, opening.
Stock books of corporations.
Safe deposit vaults.
Application for insurance of various kinds.
Where he does business.
Length of time in places.
Entries on hotel registers.
Where he votes.
Where he pays taxes, personal.
Jury duty.
Law suits as plaintiff and defendant.
Statement to third persons.
Statements in will.
Accident insurance.
Pension.
Patents, copyrights.
Address on personal effects.
Visiting cards.
Where are dividends directed to be sent.
Cable address.
Steamship tickets.
Ever in hospital.
Ever arrested.
Pew in church.
Church records as member.
Member of any exchange.
Application for automobile or other license.
Application for Civil Service examination.
Application for gas, electricity, telephone or steam.
Reservations for passage on steamships.

XV

SUGGESTED LINES OF INQUIRY WHERE STANDARDS OF HANDWRITING FOR COMPARISON ARE TO BE SOUGHT.

- | | |
|--|--|
| 1. Party's abode. | 35. Patents. |
| 2. Family. | 36. Architectural plans. |
| 3. Baptismal Certificates. | 37. Exchanges. |
| 4. Marriage Certificates. | 38. Receipt Books. |
| 5. Death Certificates. | 39. Receipted Bills. |
| 6. Autograph Albums. | 40. Receipts for pay. |
| 7. Valentines. | 41. Applications. |
| 8. Postal Cards. | 42. Employment Bureaus. |
| 9. Letters to friends. | 43. Credit Slips. |
| 10. Tradesmen in neighborhood. | 44. Department matters. |
| 11. Prescriptions. | 45. Shipping. |
| 12. Telephone contract. | 46. Agencies. |
| 13. Electric Light contracts. | 47. U. S. Post Offices. |
| 14. Gas contracts. | 48. Express and Telegraph Companies. |
| 15. Book contracts. | 49. Department Receipts. |
| 16. Furniture contracts. | 50. Messenger boys' receipts. |
| 17. Piano contracts. | 51. Answers to decoy letters. |
| 18. Installments contracts. | 52. Permits to open letters. |
| 19. His office. | 53. Reports. |
| 20. Partners. | 54. Time cards. |
| 21. Neighbors in business. | 55. Professional rolls. |
| 22. Secretary. | 56. Notaries. |
| 23. Stenographer. | 57. Order blanks. |
| 24. Office boys. | 58. Auctions. |
| 25. Janitors. | 59. Loan Companies. |
| 26. Leases. | 60. Tax Department. |
| 27. Bank accounts and Trust Companies. | 61. Jury. |
| 28. Incorporation papers. | 62. Official Positions. |
| 29. Legal papers. | 63. Municipal, State and Federal Civil Service. |
| 30. Chattel Mortgages. | 64. Custom House. |
| 31. Title companies. | 65. Complaint Bureaus of various City Departments including District Attorney. |
| 32. Safe Deposit Companies. | |
| 33. Bankruptcy proceedings. | |
| 34. Copyrights. | |

Suggested Inquiries

- | | |
|--|--|
| 66. Criminal Records. | 87. Newspapermen. |
| 67. Children's Court. | 88. Exhibition of horses, poultry, flowers, etc. |
| 68. Surrogate's Court. | 89. Athletic competitions. |
| 69. Court of Claims. | 90. Passports. |
| 70. Court Clerks. | 91. Steamship tickets. |
| 71. Executor. | 92. Railroad passes and tickets. |
| 72. Trustee. | 93. Voting records. |
| 73. Guardian. | 94. Political Organizations. |
| 74. Administrator. | 95. Labor Union records. |
| 75. Receiver. | 96. Institutions. |
| 76. Assignee. | 97. Hospitals. |
| 77. Bail bonds and other bonds. | 98. Asylums. |
| 78. Cashing at Department of Correction. | 99. Insurance. |
| 79. Naturalization. | 100. Application for License. |
| 80. School. | 101. Auto owner's or driver's license. State Department. |
| 81. College. | 102. Military records. |
| 82. Club and lodges. | 103. Army. |
| 83. Societies. | 104. Navy. |
| 84. Fraternities. | 105. Militia. |
| 85. Close associates. | 106. Pension Records. |
| 86. Rendezvous acquaintances. | |

XVI
PROOF OF TESTAMENTARY CAPACITY BY LAY
WITNESSES

Suggested Examination of Non-Expert, Non-Subscribing Wit-
nesses to Will as to Testator's Mental Capacity

I

Show by question and answer:

1. Identification of witness; name, address, age, etc.
2. That witness was acquainted with testator, specifying times.
3. Had an opportunity to observe him during such times; bring this out fully, showing extent of opportunity.
4. Did observe him during such times.
5. Bring out facts showing acts, doings, statements and declarations and manner of testator which tend to show soundness or unsoundness of testator's mind and, when this foundation has been laid, then the following is the form of questions to be put to such witnesses:

II

"From the conversations you had with him and from his actions, his acts in your presence and as to which you have testified, were they the acts and conversations of a rational or irrational man?"

III

"Were all such acts and conversations the acts of a rational man; are your conclusions drawn from the specific facts which you have testified to?" (See *People v. Hill*, 195 N. Y. 26; *Matter of Campbell's Will*, 136 N. Y. Supp. 1097.)

XVII

SUGGESTED EXAMINATION OF NON-EXPERT SUBSCRIBING WITNESS TO WILL AS TO TESTATOR'S MENTAL CAPACITY

Show by question and answer:

1. Identification of witness, name, address, age, etc.
2. That witness was acquainted with the testator, specifying times.
3. That witness had an opportunity to observe him during such times (Bring this out fully, showing extent of opportunity).
4. Did observe him during such times.
5. Bring out facts showing acts, doings, statements and declarations, and conversations and manner of testator, which tend to show soundness or unsoundness of testator's mind.
6. From the conversations had with the testator, and from his actions in witness' presence, and which he had testified to, ask witness whether the same were the acts and conversations of a rational or irrational man.
7. Whether all such acts and conversations were the acts of a rational man.
8. Whether witness' conclusions are drawn from the specific facts to which he has testified.
9. That witness was subscribing witness to will of testator, and when this foundation has been laid (and as a matter of fact only the fact that he was subscribing witness to the will is necessary, although the other matters are desirable) then the following is the proper form of question that may be put to such witness:
"In your opinion what was the testator's mental condition on the date on which he executed the alleged will?"
10. As to attorney who is not a subscribing witness, see *Matter of Cummin*, 201 N. Y. 123.

PART II
HINTS ON APPEAL PROCEDURE
[53]

PART II

HINTS ON APPEAL PROCEDURE

I

FROM JUDGMENTS.

Supreme Court, Trial Term, to Appellate Division

Entered on verdict and order denying motion for new trial.

1. As soon as the verdict has been rendered, the next duty of the defeated counsel is to move to set aside the verdict and for a new trial, and he must make up his mind whether he will make the motion then and there or wait until some future time to make it. He has under § 999 of the Code the rest of the term in which to move. If made as a formal motion for securing the right to have facts reviewed at the Appellate Division, it is best to make it then and there, but if the attorney feels that there is any hope of having a new trial on the ground that the verdict is excessive or insufficient in damages or otherwise contrary to the evidence, it is better to obtain leave to submit briefs, or make motion at a later day in the same term.
2. When verdict rendered, move to set aside verdict and for new trial upon all the appropriate grounds in § 999 of the Code, specifying them, and upon any special grounds that exist. Motion to set aside verdict and for new trial must be made at same term.

And before same judge. (§ 999, Code; but see § 1002, Code. See Rule 31, G. R. P.)

If made at close of case and judge reserves decision, or if it is to be made later, obtain and serve with notice of entry, order staying entry of final judgment until decision of motion and entry of order thereon. (§ 1005, Code.)

The court usually denies this motion, in which event —

Taking Appeal

3. Move for stay of execution and additional time to make a case.

The court usually grants this motion and gives 20 to 30 days stay of execution, and from 30 to 60 days in which to make a case. (See § 1351, Code.)

4. Get exhibits.

5. Get extract from clerk's minutes. (§ 1237, Code.) If decision is reserved on motion for new trial the exhibits and extracts from minutes cannot be obtained until the trial judge decides the motion.

6. Order copy of stenographer's minutes of trial.

7. Enter in diary when stay expires.

The stay begins to run from date of entry of judgment.

8. Receive copy of judgment with notice of entry.

9. Enter in diary when time to appeal from judgment expires. (See 11, below.)

Thirty days after service of judgment with notice of entry. (§ 1351, Code.) *This time cannot be extended by the court* (§ 784, Code), but same may be extended by party (not attorney) by stipulation acknowledged.

But where the appellant, seasonably and in good faith, serves the notice of appeal either upon the clerk or upon the adverse party or his attorney, but omits through mistake, inadvertence or excusable neglect to serve it upon the other, or to do any other act necessary to perfect the appeal or to stay the execution of the judgment, the court in or to which the appeal is taken, upon proof by affidavit of the facts, may in its discretion permit the omission to be supplied or an amendment to be made upon such terms as justice requires. (§ 1303, Code.)

10. Enter in diary when time to serve a proposed case expires, and also last day to serve notice of application for extension of time to serve case, which is two days before last day to serve case.

Thirty days after service of judgment with notice of entry unless longer time granted by trial judge. (Rule 32, G. R. P.)

11. Receive order denying motion for new trial with notice of entry.

Notice of Appeal — Staying Execution

12. Enter in diary when time to appeal therefrom expires.

Thirty days from service of a copy with notice of entry.

(§ 1351, Code.)

The usual practice is to serve a copy of the order denying motion for new trial with the copy of the judgment.

This is not always done, however.

(See 126 *N. Y. Supp.* 118.)

13. If copy of order denying motion for new trial is not served by adversary, draw and enter same if you wish to review questions of fact in the case. (See that order recites that it is made on motion of your opponent or proceed under § 1304, Code.)

See Forms, p. 689 *et seq.*

14. Serve copy with notice of entry on adversary.

15. Draw notice of appeal.

See Form, p. 712, §§ 1300-1301, Code.

Notice of appeal cannot be amended after time to appeal has expired, when the effect of the amendment will be to extend the time of appeal.

16. File notice of appeal with County Clerk. (§ 1300, Code.)

17. Draw undertaking on appeal or make arrangements with surety company for same. (See Form, p. 723, §§ 810, 813, Code; Rule 5, G. R. P.)

Undertaking is not required to perfect the appeal, but, except where it is specifically provided by law, it is necessary to stay execution of the judgment. (§ 1351, Code.)

Sections 1327 to 1333, Code, provide various methods applicable to various classes of cases whereby execution of the judgment appealed from may be stayed pending appeal upon the compliance by the appellant with certain prescribed conditions. (65 *App. Div.* 466.)

Security may be waived in writing. (§ 1305, Code.)

Deposit in lieu of undertaking. (§ 1306, Code.)

As to dispensing with or limiting, see § 1312, Code; see also §§ 1326, 1327, 1334, 1351 and 1352, Code.

If action is one to recover chattel, draw affidavit and order fixing amount of bond.

Undertaking on appeal need not be approved. (§§ 1335, 1351, Code. See *Nichols' Prac.*, pp. 3741, 3745, 3765,

Justification of Sureties

3766; *Abbott's Prac. & Forms*, p. 462; *Seabury, City Court Prac.*, p. 897; *Rabinowitz v. Lipschitz*, 65 *Misc.* 311.)

The erroneous impression that all undertakings on appeal must be approved before filing is very general, and in consequence the practice has grown up of having them so approved.

18. File undertaking with County Clerk before stay expires and before time to appeal expires. (§§ 1307, 1334, Code; Rule 4, G. R. P.)

The undertaking and notice of appeal are usually filed together.

19. Serve notice of appeal, and copy of undertaking with notice of filing. (§§ 1300, 1302, 1326, 1334, 796 and 797, Code.)

20. Enter in diary last day for respondent to serve notice of exception to sureties.

Ten days after service of undertaking with notice of filing.
(§ 1335, Code.)

21. Receive notice of exception to sufficiency of sureties.

22. Enter in diary last day for sureties to justify.

Within 10 days after service of notice of exception.
(§ 1335, Code.)

23. Enter in diary last day to serve notice of justification.

At least 5 days' notice of justification must be given.
(§ 1335, Code.)

24. Draw and serve notice of justification of sureties.

See Form, p. 726.

Five days' notice must be given, and date of justification must be within 10 days after service of notice of exception. (§ 1335, Code.)

25. Enter in diary to notify sureties to justify, and date of justification.

26. Notify sureties when and where to justify.

27. Attend on justification.

28. If sureties justify, and undertaking approved, have endorsed by judge:

"I hereby find the sureties on the within undertaking sufficient and hereby allow them and each of them."

(Date.)

(Signature.)

Preparing Proposed Case

29. Serve notice of approval of sureties. (§ 1335, Code.)
See Form, p. 727.
30. If extension of time to make and serve case needed, or if extension by stipulation has been had and further time is needed, ask adversary to stipulate for same at least *three* days before time to serve case expires. *This is very important*, as the Court Rules provided that “no order extending the time to serve a case, or a case containing exceptions, the time within which amendments thereto may be served, shall be made unless the party applying for such order serve a notice of *two* days upon the adverse parties of his intention to apply therefor, stating the time and place for making such application.” (See Rules 32 and 33, G. R. P.)
31. If extension by stipulation refused, apply to court at Special Term for same on two days’ notice. (Rule 32, G. R. P.; §§ 781, 783, Code; 25 *How. Pr.* 438.)
32. Obtain order extending time and serve same with notice of entry.
33. Get opinion or memorandum of judge, if one filed, or make affidavit that none was given, or if given that copy cannot be procured. (Rule 41, G. R. P.)
34. Receive stenographer’s minutes of trial.
35. Prepare proposed case. (§§ 1353, 997, Code.) Rules 32, 33, 34 and 41, G. R. P., as to whether a case is necessary, *e. g.*, where the appellant is satisfied with the rulings made on the trial and with the findings of fact and desires only to review the conclusions of law based thereon. (See § 998, Code; 103 *N. Y.* 658; 11 *App. Div.* 316.) The Appellate Court assumes in such a case that there was no evidence from which any other facts could have been found. (135 *N. Y.* 209; 147 *N. Y.* 580.)
Section 997, Code, provides: “The case must contain so much of the evidence, and other proceedings upon the trial, as is material to the questions to be raised thereby, and also the exceptions taken by the party making the case.”
Rule 34, G. R. P., provides: “A bill of exceptions shall contain only so much of the evidence as is necessary to present the questions of law upon which exceptions were taken on the trial; and it shall be the duty of the judge

Proposed Case — What to Contain

upon settlement, to strike out all the evidence and other matter which in his opinion have been inserted unnecessarily." It is further provided in this Rule that "A case and exceptions shall contain *all the evidence* by question and answer, the rulings of the court and the exceptions of *all parties* to the record, but shall not contain the opening and summing up or the remarks of counsel unless ordered by the judge or referee before whom the case or exceptions are settled."

It will be noted that § 997, Code, requires the exceptions taken by the "party making the case," but by Rule 34 the exceptions of "all parties" to the record must be contained in the case.

After the change in the Rules requiring all the evidence to be set forth by question and answer instead of narrative, doubt arose as to the meaning of the words "*all the evidence*," used in Rule 34. It was contended that General Rule 34, as amended in 1913, required the appellants to propose a case containing "*all the evidence*" by question and answer, or rather every question propounded to a witness and his answer thereto as disclosed by the stenographer's minutes. The words "*all the evidence*" are controlled by the words "*so much of the evidence as is material to the questions to be raised thereby*," and these two portions of the Rule must be read together. It is not to be presumed that the Judges in convention intended by the amendment to graft upon § 997, Code, a requirement beyond its plain provisions. (*Balch v. Fink*, 92 Misc. 47.)

Section 1323-a, Code, provides as follows: "In case of an appeal, every remark or comment of the presiding judge during the trial, duly excepted to, shall be the subject of review, but the case and exceptions on appeal shall be settled by the trial justice as now provided by law."

If the question of weight of evidence is to be reviewed, a statement that the case contains all the evidence taken at the trial is necessary. (§ 997, Code.)

The parties may agree on the facts proven to be inserted in the case, instead of the testimony with the approval of the judge. (Rule 32, G. R. P.)

Proposed Case — What to Contain

The denial of a motion to postpone the trial of an action is not conclusive and is the subject of review on appeal. The disposition of such a motion is a proceeding in the trial, and if excepted to is reviewable, involving a question of law; and the case should contain the affidavit upon which the motion was founded, and the exception to the denial of the motion and annexed to the judgment roll and form part of the papers on appeal.

Or, the defendant, unsuccessful in his motion to postpone, may withdraw from the trial and allow an inquest and afterwards move at Special Term to set the inquest aside and appeal from an order made thereon. The printed papers should contain only the papers that were before the judge when the motion was decided.

If one party presents affidavits upon a motion to postpone it may be fatal for the other party to rely on oral statements, as they will not appear in the appeal-book unless entered on the record; the only safe practice is to obtain leave to supplement the oral statements made in opposition by affidavits and file same so they may also become part of the judgment roll.

Gregg v. Howe, 37 N. Y. Sup. Ct. 421, and see *Garfield v. Colwell*, 8 N. Y. Supp. 380.

To review the question whether a finding was supported by evidence or refusal to charge the jury that there was no evidence upon a certain question or that a finding was not sustained by evidence or that a finding of fact is against the evidence, it must appear that all the evidence bearing upon that point or bearing upon the findings sought to be reviewed appears in the case. Otherwise the appellate court will assume that the evidence was sufficient to sustain the findings of fact.

And where documentary evidence received upon the trial is omitted from the case, findings of fact will not be reviewed as it may have had a bearing upon the determination.

The case should not contain questions withdrawn or answers excluded without objection.

Exhibits should not be included at length unless the judge so directs. It is common practice, however, to insert

Proposed Case — What to Contain

exhibits upon which the cause of action or defense is founded in full unless they are deeds, bonds, mortgages, checks or papers which can be abstracted. Cumulative or explanatory exhibits should be abstracted if possible. Where appellant desires to print an abstract of an exhibit, he should serve the abstract as a part of the proposed case. The respondent must either accept it or propose as an amendment his counter abstract or demand that it be printed in full.

When a document is excluded which has been offered in evidence, the entire writing rejected or a sufficient statement of its contents, should be included. (See 127 *App. Div.* 727.)

If only questions of law are to be raised, all the evidence should not be inserted but only so much as is material to the questions to be reviewed. (G. R. P. 34.)

The theory of the proposed case is that the appellant will insert all the evidence bearing upon the questions to be raised and the respondent add all he deems necessary to a solution of such questions.

An exception gives notice to the respondent of an intention to raise the questions and put the burden on the respondent of adding any needed proof.

If the proposed case does not contain a statement that it contains *all the evidence* it may be assumed that only questions of law are to be raised; but if the case contains such a statement the respondent must see that nothing essential is omitted.

In actions tried by jury, see 150 *N. Y.* 354; 204 *N.Y.* 356.

The lines of each page of the proposed case should be numbered. (Rule 32, G. R. P.)

The following method is suggested for preparing a proposed case:

Proposed Case

Case

SUPREME COURT,
(Kings) County.

(SAMUEL SMITH and MARY
SMITH,)

Plaintiffs,

vs.

(JOHN JONES,)

Defendant.

Proposed Case and
Exceptions.

1 The issues joined in the above-entitled action came
2 on for trial before the Hon. (Stephen Callaghan,) a
3 Justice of this Court, and a jury at a Trial Term,
4 (Part II,) thereof, in the (Borough of Brooklyn, City
5 of New York,) on the (10th) day of (June, 1915.)

6 The plaintiffs appeared by (J. J. Palmer,) and the
7 defendant by (Charles Lend.)

8 A jury was called and sworn and then the defend-
9 ant's counsel addressed the court: "I move to dismiss
10 the plaintiff's complaint on the ground that it fails
11 to state a cause of action." Decision reserved.

12 Mr. Palmer: I call upon John Jones to produce a
13 statement of account between Smith and John Jones,
14 dated June 11th, 1913. The paper was produced and
15 submitted to the court.

16 Mr. Palmer then opened the case to the jury.

17 The plaintiffs then to maintain the issues on their
18 part called as a witness John David, who being sworn
19 testified as follows:

The testimony then follows by question and answer.
(G. R. P. 34.)

*At the end of the proposed case the following state-
ment should appear:*

"The foregoing case and exceptions contains all the
evidence taken upon the trial of this action."

Although it is a general rule that the appeal must be
heard upon the pleadings and proofs, if you

 Endorsement on Proposed Case

represent the appellant you must be aware that the rule is subject to certain exceptions and that your opponent may in a proper case introduce evidence upon the hearing of the appeal in support of the judgment appealed from. Thus, where record evidence has been improperly proved upon the trial, or where a fact has been assumed on the trial which might have been established by record evidence and such evidence was inadvertently omitted, or where it is evident that the record itself cannot be contradicted or varied, so that a new trial would not alter the case, the record may be read by the respondent upon the hearing of the appeal to supply the deficiency and sustain the judgment. (117 *App. Div.* 528; *People v. Flack*, 216 *N. Y.* 123.)

But such evidence is never received by an appellate court for the purpose of reversing a judgment.

As to practice in making and serving case, see Baylies on New Trials and Appeals; *People v. Albany R. R.*, 57 *Barb.* 204-209.

 Endorsement on proposed case

Sir:

PLEASE TAKE NOTICE that within is case and exceptions proposed by the (*plaintiff*)-appellant herein.

Dated, (*New York, July 26, 1916.*)

Yours, etc.,

(*RICHARD KELLER,*)

Atty. for (*Plff.*)-Applt.

To (*FREDERICK H. COWPER,*)

Atty. for (*Def't.*)-Respt.

36. Serve proposed case on opponent before time to do so expires.

Thirty days after service of judgment with notice of entry.

(Rule 32, G. R. P.)

37. Enter in diary last day to receive amendments.

Ten days after service of proposed case. (Rule 32, G. R. P.)

Proposed Amendments

38. Receive proposed amendments.

Bear in mind, that if respondent applies to you on last day to serve proposed amendments for an extension of time therefor, it is too late for him to obtain such extension from the court if you deny same, as two days' notice is required. (Rules 32 and 33, G. R. P.)

The following is the usual form of such amendments:

Proposed Amendments

SUPREME COURT,

(*New York*) County.

(*ROBERT BURNS*),

(*Plaintiff*)-Appellant,

against

(*FRANK JOHNSON*),

(*Defendant*)-Respondent.

Sir:

PLEASE TAKE NOTICE that the (*defendant*) hereby proposes the following amendments to the proposed case containing exceptions heretofore served by the (*plaintiff*) and appellant herein, viz.:

First Amendment: At page 7, line 22, strike out the words "to which ruling defendant duly excepted."

Second Amendment: At page 8, line 9, strike out word "stocks" and insert the word "bonds."

Third Amendment: At page 11, line 4, after the words "without notice to me" add "except as I heretofore stated."

Fourth Amendment: At page 11, line 9, insert after the word "will" the word "not."

(*BUDD & BUDD*),

Attorneys for (*Deft.*)-Respt.

To (*GUY SMITHERS*), Esq.,

Attorney for (*Plff.*)-Applt.

Notice of Settlement

Indorsement on Amendments

Sir:

PLEASE TAKE NOTICE that the within is a copy of the amendments proposed by the (*defendant*) and respondent to the case proposed by the (*plaintiff*) and appellant in this action.

Dated (*New York, Sept. 15, 1915.*)

(BUDD & BUDD,)

Attorneys for (*Deft.*)-Respt.To (*GUY SMITHERS,*) Esq.,Attorney for (*Plff.*)-Applt.

Amendments are not as frequent now, as the Q. & A. form has obviated the controversies that used to arise in casting the testimony into narrative. The most common ground of difference now arises on the insertion or omission of "remarks" of counsel. For the rest, the case on appeal is now in most instances a reprint of the stenographer's minutes.

39. Enter in diary last day to serve notice of settlement.

Within 4 days after service of proposed amendments.

(Rule 32, G. R. P.)

40. If proposed amendments are served, mark them "allowed" or "disallowed." (Rule 32, G. R. P.) The amendments proposed are retained by the appellant until submitted to the judge on settlement.

41. Draw notice of settlement of case and exceptions before the judge who tried the action and serve within four days from service of proposed amendments. The date of settlement stated therein must not be less than four nor more than ten days after service of notice. Rule 32, G. R. P., § 997, Code.)

Notice of Settlement

Notice of Settlement

SUPREME COURT,
(*Kings*) County

(*SAMUEL SMITH and MARY
SMITH,*)

Plaintiffs,

against

(*JOHN JONES,*)

Defendant.

Sir:

TAKE NOTICE that the proposed case in this action with the proposed amendments, will be submitted to Mr. Justice (*Callaghan*,) before whom this action was tried, for settlement at his Chambers in the County Court House, in the (*Borough of Brooklyn, City of New York*,) on the (*10th*) of (*October, 1915*,) at 10.30 a. m.

Dated (*New York, October 6, 1915*.)

Yours,

(*BUDD & BUDD*,)

Attys. for (*plaintiff*).

To (*GUY SMITHERS*,) Esq.,

Atty. for (*defendant*).

42. Enter in diary date of settlement.
43. Prepare memorandum for court on settlement, and note that amendments must contain references to pages of stenographer's minutes. (Rule 32, G. R. P.)
44. Settlement. (Rules 32, 34, G. R. P.; § 997, Code.)
Submit to judge on settlement.

1. Proposed case.
2. Proposed amendments marked as above.
3. Stenographer's minutes of trial.
4. Exhibits or models, if necessary.
5. Memorandum as to settlement.

The settlement itself is usually informal. Affidavits may be presented. The judge's recollection assisted by the stenographer's minutes controls. Where there is a dispute see:

Settlement of Case

34 *Hun*, 547, 112 *N. Y.* 592, 40 *App. Div.* 86.

Where case is tried before referee he settles it and orders it on file in the county clerk's office and in the Appellate Division.

On resettlement see:

112 *N. Y.* 592, 116 *App. Div.* 532, 163 *N. Y.* 99, 119 *N. Y.* 633, 34 *Hun*, 547, 7 *N. Y. Supp.* 321, 7 *N. Y. Supp.* 69, 28 *App. Div.* 504, 35 *App. Div.* 379, 104 *App. Div.* 26, 87 *App. Div.* 55, 133 *App. Div.* 517, 83 *N. Y. Supp.* 1077, 139 *N. Y. Supp.* 305, 154 *App. Div.* 827.

45. See that judge signs an order settling the case and ordering it on file.

This order is usually endorsed by the judge on the original proposed case submitted to him.

46. When case settled, obtain original proposed case and amendments submitted, *i. e.*, the proposed case with amendments marked "allowed" and "disallowed" by the attorney and the judge's order settling and filing same and exhibits and models.
47. Ascertain if attorney will stipulate waiving certification.
48. Enter in diary last day to serve three copies of printed case on adversary, and to file with the clerk of the Appellate Division the original printed case with proof by affidavit of service of such three copies.

Twenty days after settlement and filing of case.
(Rule 41, G. R. P.)

The following has been promulgated by the Appellate Division, First Department:

Statement by Supreme Court — Appellate Division — First Department.

Rule 41 of the General Rules of Practice provides in substance that "the party whose duty it is to furnish the record shall cause a printed copy of the requisite papers to be filed in the office of the clerk of the Appellate Division within twenty days after an appeal has been taken;" and further that "if the papers shall not be filed and served as herein provided by the party whose duty it is to do so, his opponent may move the court on three days' notice, on any motion day, for an order

Printed Case

dismissing the appeal." If the appellant is unable within that time to make, serve and file his record upon appeal, it is his duty to have the time extended either by consent or order; and if he neglects to obtain such extension, he suffers a default.

The application for an extension must always be made in the court below or to a justice thereof; and where a motion to dismiss is made in this court, and it appears that the appellant has suffered a default in filing and serving the papers specified in Rule 41, nothing remains, if the rule is to be enforced, but for this court to dismiss the appeal. Excuses for delay may very properly be presented to the court below on an application to extend the time, but they cannot be considered when offered at the Appellate Division in opposition to a motion to dismiss — the default being shown or admitted. This has been frequently called to the attention of the bar, and if Rule 41 is to have any force and effect, it is certain from its reading that, upon such default being made to appear, it becomes the duty of this court to dismiss the appeal.

If at the time the motion to dismiss is heard it should appear that a motion is pending to open the default and have the time extended this court may properly hold the motion to await the determination of that application in the court below; but further indulgence cannot be extended to those who neglect to comply with the rule.

We have deemed it proper to call attention again to this subject, to the end that those in a position to suffer as a result of their neglect to apply in the court below for an extension of time will have no reason to complain of the lack of adequate notice.

49. Prepare papers for printed case. (See § 796, Code; Rule 43, G. R. P.; Rule 5, Ct. Appeals.)

Two appeals should not appear in one appeal book although tried together and settled on one proposed case.

The following is a proper arrangement of papers in a case on appeal from judgment:

The name describing each paper should be placed at the top thereof.

(a) Index.

This is necessary. (Rule 43, G. R. P.) It must specify all papers, and give the names of all witnesses, and the designation by the stenographer by number of all exhibits, and the number of the page in the case where they appear.

It should also contain reference to folios where motion for dismissal of complaint or for the direction of verdict is contained and to the statement that the case contains all the evidence.

The nature of each exhibit should be indicated by a concise description, and the folio at which it was admitted in evidence given.

Titles of papers should be arranged alphabetically and names of witnesses alphabetically or chronologically. The stenographer's designation of the exhibits by letter or number should control the order in which they are printed. Plaintiff's exhibits should be first.

(b) Statement under Rule 41.

While the rule requires that this statement should contain merely the time of the beginning of the action and of the service of the respective pleadings, the names of the original parties in full, and any change in the parties if such has taken place, it is the practice and is very advisable that this statement should be very full, and should give a concise history of the action, even though not required by the rule. As, for instance, any change that has taken place in the attorneys for any of the parties.

Statement under Rule 41

SUPREME COURT — APPELLATE DIVISION
, (FIRST) DEPARTMENT

(JOHN DOE,) }
Plaintiff-(Appellant), }

vs.

(RICHARD ROE,) }
Defendant-(Respondent). }

STATEMENT UNDER RULE 41

This action was commenced by the service of a summons
(and complaint) on (March 6, 1915).

(The amended complaint was served on May 15, 1915.)

The answer of the defendant to the complaint was served
on (July 3, 1915).

(The reply was served on July 17, 1915.)

The name of the original plaintiff is (John Doe).

The name of the original defendant is (Richard Roe).

Plaintiff's attorneys (until Judgment) were (Kent &
Blackstone,) and by order entered herein on (June 18,
1916,) (Irving & Smith) were substituted for (Kent
& Blackstone).

Defendant's attorney is (James Young).

There has been no change of parties or attorneys herein
except as above stated.

Judgment was rendered in favor of the (defendant) on
the (15th) day of (June, 1916,) after trial before Hon.
(John Ford).

The notice of appeal was served and filed on the (23d)
day of (June, 1916).

As to order of papers after statement under Rule 41, see
105 App. Div. 476.

(c) Notice of Appeal.

(d) Pleadings, and all papers on file with judgment roll,
in their chronological order, i. e.:

Summons.

Complaint.

Answer.

Reply.

Printed Case

Extract of minutes (if in jury case).

Judgment.

Order denying motion for a new trial.

Order setting aside verdict or granting new trial.

Any other papers used.

In the First Department all titles and verifications must be set out in full, but in the Second Department it has been held that titles should be stated but once, and verifications should be merely noted, unless they are material to some questions on appeal. (32 *Misc.* 165.)

(e) Case.

Evidence.

Charge of judge; requests to charge and exceptions.

Verdict.

Motion, if any.

Exhibits, if not in the evidence.

At the top of each page of the case must be printed the name of the witness then testifying, and of the party calling him, indicating whether the examination is direct, cross or re-direct. (G. R. P. 43.)

If questions of fact are to be reviewed, there must appear in the case itself substantially the statement that

“The foregoing contains all the evidence and testimony offered and given upon the trial of the action.” (See 204 *N. Y.* 351, 356.)

(f) Opinion, or affidavit of no opinion. (Rule 41, G. R. P.)

Affidavit of No Opinion

Affidavit of No Opinion

SUPREME COURT,
(*New York*) County.

(*ARTHUR JUDSON,*)
Plaintiff,
against

(*HERMAN CONRAD,*)
Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*Robert Johnson,*) being duly sworn, says, I am one of the attorneys for the appellant herein. No opinion or memorandum was given by the trial judge in this case.

(*ROBERT JOHNSON.*)

Sworn to before me this (*4th*)

day of (*October, 1916*).

(*HENRY BURDER,*)

Notary Public,

(*N. Y.*) Co., No. 5.

(*g*) Certificate of clerk of court, under § 1353, Code, and order directing case to be filed and order directing filing in Appellate Division. (See 91 *App. Div.* 372.)

Or according to common practice the following stipulations and orders are used in place of above:

Stipulation Waiving Certification

IT IS HEREBY STIPULATED that the foregoing are true and correct copies of the judgment roll in this action, the order denying the defendant's motion for a new trial,* the notice of appeal to the Appellate Division and the case and exceptions as settled, now on file in the office of the Clerk of the County of (*Kings*), and certifi-

* Insert where proper and necessary "opinion of the trial court," or any other paper, not part of the judgment roll, but included in the printed case.

Waiver of Certification — Order Filing Record

cation of the same is hereby waived, pursuant to Section 3301 of the Code of Civil Procedure.

Dated, (*January 7, 1913.*)

Stipulation Settling and Filing Case

IT IS HEREBY STIPULATED that the foregoing record contains all the evidence given upon the trial of this action and that the same be settled and ordered on file as the case on appeal, and annexed to the Judgment roll herein on file in the office of the Clerk of the County of (Kings); and that an order may be made directing the printed case on appeal to be filed in the office of the Clerk of the Appellate Division of the Supreme Court, (Second) Department.

Dated, (*January 7, 1913.*)

Order Settling and Filing Case on Appeal

On the above stipulation the foregoing record containing all the evidence is hereby settled and ordered on file as the case on appeal in this action.

Dated, (*January 7, 1913.*)

(*JOSEPH ASPINALL,*)

Justice of the Supreme Court.

Order Directing Filing of Printed Case in Appellate Division

Pursuant to Section 1353 of the Code of Civil Procedure, the foregoing printed record is ordered on file in the office of the Clerk of the Appellate Division of the Supreme Court, (Second) Department.

Dated, (*January 8, 1913.*)

(*JOSEPH ASPINALL,*)

Justice of the Supreme Court.

Where there is no case made and settled the above stipulation and order do not apply and are not necessary. In such case the only requirement to be fulfilled is to have a stipulation of waiver of certification or a certificate of the clerk.

As to the use of italics in case, see 12 *N. Y. Supp.* 870; 50 *App. Div.* 461.

50. Send papers to printer.

Filing Record in Appellate Division

Keep in mind the last day to serve and file the printed appeal book.

Instruct printer to comply with Rule 43, G. R. P., as to printing at the top of each page the name of the witness then testifying, the name of the party on whose behalf he is called and whether examination is direct, cross or redirect.

Printed case on appeal should be folioed.

51. Receive proof of appeal book.
52. Submit same to opposing counsel for correction.
53. Receive proof with objections.
54. Agree upon changes.
55. When changes agreed upon have case printed.

Thirty copies are usually ordered (unless intention is to appeal to Court of Appeals, when 60 copies are ordered unless there are three or more attorneys, when 70 or more copies will be required).

Blanks are usually left in three copies for signatures to stipulations and orders in case, and affidavit of no opinion, and the names printed in the remaining copies.

56. Receive printed case on appeal from printer.
57. After settlement have stipulations settling case, waiving certification in three copies signed by attorney for respondent.
58. If respondent declines to sign such stipulations, file the original (typewritten) case and amendments as they came from the judge, and an engrossed copy of the case as settled by the judge with the county clerk and have printed case certified by the clerk, or obtain order extending time to file case from the court.

Rule 41, G. R. P.; § 1353, Code. See 26 *How.* 375.

It is very unusual for attorneys to require certification of the case, and where such a refusal to assent to the usual stipulations is met after the case is printed, certain changes in the printed case become necessary. The clerk's certificate must be added, and the orders settling the case and ordering it on file must be changed as follows: Instead of "on the annexed stipulation, etc.," must be inserted "upon the annexed certificate of the clerk of this court that the foregoing is a true copy of the case and exceptions, the judgment roll and all other papers on file herein, etc."

Calendar Practice — First Department

59. Have the orders settling case and ordering it on file and the order filing record in Appellate Division signed by the trial judge in the three copies with blanks left for this purpose.
60. File one signed copy of the printed case with the county clerk.
61. Within twenty days after settlement (except in Fourth Dept.) serve three copies of printed case on attorney for respondent and make affidavit of such service. (Rule 41, G. R. P.)
62. Within twenty days after settlement file a signed copy of case with proof by affidavit of due and timely service of three copies on adversary with clerk of Appellate Division (Rule 41, G. R. P.) and in First Department file 19 printed copies. (Rule V, First Dept.)
63. The special Rules of each Department should now be consulted.

FIRST DEPARTMENT

1. Enter in diary last day to serve and file appellant's points, notice of argument and note of issue.
Within twenty days after filing with clerk the papers on appeal. (Rule 6, First Dept. Rules.)
2. Prepare and print appellant's points.
As to form of points and citation of authorities, see G. R. P. 40, 43; § 796, Code.
3. Within twenty days after filing papers on appeal, serve on respondent's attorney three copies of points and get admission of service, and file with clerk of Appellate Division eighteen printed copies with proof of service of three copies. When the papers on appeal are filed in July, August or September, points must be filed and served at least fifteen days before first Tuesday of October. (Rule 6, First Dept. Rules.)
4. Prepare and serve notice of argument.
After filing and serving papers on appeal and appellant's points, either party may notice case for argument for any day of the term. (Rule 5, First Dept. Rules.) If admission of service of notice of argument has not been obtained, prepare affidavit of service of same.

 Calendar Practice — Second Department

5. Application for preference must be served with notice of argument. (Rule 5, First Dept. Rules.)
6. Prepare note of issue.
It must state date on which notice of appeal was served.
7. Place appeal on Calendar.
File notice of argument, with admission of or proof of service, and a note of issue.
8. Enter in diary last day to receive respondent's points.
Ten days after service of appellant's points. (Rule 6, First Dept. Rules.)
9. Receive respondent's points.
10. Enter in diary last day on which to serve points in reply.
Five days after receipt of respondent's points. (Rule 6, First Dept. Rules.)
11. Within five days after receipt of respondent's points prepare and print points in reply.
12. Within same time serve three copies of points in reply on respondent's attorney; and
13. File with clerk of Appellate Division 18 copies of points in reply.

At any time after filing note of issue and before case is placed on day calendar the attorneys, by written consent, may set the case down for any future day of the term. This consent must be filed with the clerk before the case is placed on the day calendar. (Rule 6, First Dept. Rules.)

At any time after the papers upon which the appeal is to be heard and printed points have been filed with the clerk, as required by Rule 41, G. R. P. and Rule 6, First Dept. Rules, either party may, by written stipulation, filed with the clerk, submit the appeal on such papers and points. (Rule 7, First Dept. Rules.)

IN SECOND DEPARTMENT

1. Enter in diary last day to file note of issue, and serve notice of argument.

Calendar Practice — Second Department

Eight days before first day of term for which appeal is noticed for argument. (Rule 39, G. R. P.)

2. Prepare notice of argument for the next term, serve same, and obtain admission of service.
3. Prepare note of issue.

It must state date on which notice of appeal was served.

Claim for preference must be stated. If the cause is preferred by order, copy of order granting same must be attached. (§ 793, Code; Rule 8, Cal. Rules, 2d Dept.)

4. Eight days before the first day of the term for which the appeal is noticed, file with the clerk of the Appellate Division:

(a) Notice of argument, with proof by admission or affidavit of service upon respondent's attorney.

(b) Note of issue.

It is good practice and convenient to also file at the time 18 copies of printed case with proof by admission or affidavit of service of three copies on respondent's attorney. These may, however, be filed any time before argument.

5. Enter in diary last day to serve and file appellant's points.

At least five days before the first day of the term.
(Enum. Cal. Rule, Second Dept. Rules.)

6. Prepare and print points.

As to form and citation of authorities, see Rules 40 and 43, G. R. P., Rule 10, Second Dept. Rules, requires the name of counsel who is to make the argument to be endorsed on the first page, *e. g.*, "To be argued by Albert Arnold." (See also Rule 12, Second Dept. Rules, and Rule 5, Court of Appeals.)

7. At least five days before the first day of the term, serve three copies of points on respondent's attorney and obtain admission of service; and

Calendar Practice — Third Department

8. File with the clerk of Appellate Division 17 copies of points with proof by admission or affidavit or service of three copies on respondent's attorney. (Enum. Cal. Rule.)
9. Enter in diary last day to receive respondent's points. *Five days after service of appellant's points.* (Enum. Cal. Rule, Second Dept. Rules.)
10. Receive respondent's points.
11. Enter in diary last day on which to serve and file points in reply. *Three days after receipt of respondent's points.* (Enum. Cal. Rule, Second Dept. Rules.)
12. Prepare and print points in reply.
13. Within three days after receipt of respondent's points, serve three copies of points in reply on respondent's attorney, obtain admission of service; and
14. File with clerk of Appellate Division 17 copies of points in reply, with proof by affidavit or admission of service of three copies on respondent's attorney.

Causes can be reserved for a day subsequent to the time when they would be reached in their order, but not, however, later than the Friday of first week of the term. A stipulation for reservation must be filed with the clerk before the day calendar is made up (1 P. M.). (Rule 5, Second Dept. Rules.)

IN THIRD DEPARTMENT.

1. Enter in diary last day in which to serve appellant's points. *Twenty days before the first day of term for which appeal is to be noticed for argument.* (Rule 14, Third Dept. Rules.)

2. Prepare and print points.

As to form of points, and citation of authorities, see Rules 40 and 43, G. R. P. (See Rule 9, also statement required.) Rule 10 requires name and residence of counsel who is to argue appeal to be endorsed on papers.

3. Before the time expires, serve three copies of points on respondent's attorney and obtain admission of service.
Enter in diary: last day to serve notice of argument.
At least 8 days before first day of term for which case is noticed.
4. Prepare notice of argument for the next term.
5. At least eight days before the first day of the term serve same and obtain admission of service. (Rule 39, G. R. P.)
6. Enter in diary:
 1. Last day to receive respondent's points.
Eight days before the first day of the term for which appeal is noticed. (Rule 14, Third Dept. Rules.)
 2. Last day on which to file note of issue.
Eight days before commencement of term for which appeal is noticed for argument. (Rule 39, G. R. P.)
7. Prepare note of issue:
State that appeal is to be placed on general calendar. (See Notice to attorneys, Third Dept. Rules.)
State date on which notice of appeal was served.
Claim for preference must be stated; or copy of order granting preference if any must accompany it. (Rule 3, Third Dept. Rules.)
8. Eight days before first day of term for which appeal is noticed, file with the Clerk of the Appellate Division a note of issue. (Rule 39, G. P. R.)
9. Receive three copies of respondent's points.
10. Enter in diary last day on which to serve reply points.
Three days before the first day of the term for which appeal is noticed. (Rule 14, Third Dept. Rules.)
Service may be made either personally or by mail, but service by mail does not extend time within which answering brief may be served. (Rule 14, Third Dept. Rules.)

Calendar Practice — Fourth Department

11. Prepare and print points in reply.
12. Serve points in reply.
Three days before the first day of the term for which appeal is noticed. (Rule 14, Third Dept. Rules.)
13. *Before argument* file with Clerk of Appellate Division 13 copies of printed case and printed points.
As to passing and reserving cases by consent, see Rules 6 and 12.

IN FOURTH DEPARTMENT

1. Enter in diary:
 - (a) Last day to file 16 copies of printed case.
 - (b) Last day to serve three copies of points on respondent's attorney.
 - (c) Last day to file 16 copies of appellant's points.
Fifteen days after service of the printed case. (Rule 9, Fourth Dept. Rules.)
2. Prepare and print appellant's points:
As to form of points, and citation of authorities, see Rules 40 and 43, G. R. P., and § 796, Code. See Rule 10, as to statement required; Rule 11, requires name and address of counsel who argues appeal to be endorsed on brief. (And see Rule 5, Court of Appeals.)
3. *Fifteen days after service of printed case:*
 1. Serve three copies of points on respondent's attorney, obtain admission of service.
 2. File 16 copies of printed case.
 3. File 16 copies of points, with proof of service of three copies on respondent's attorney.
(Rule 9, Fourth Dept. Rules.)
4. Enter in diary last day to receive respondent's points.
Must be served seven days after service of appellant's points. (Rule 9.)
5. Receive respondent's points.
6. Enter in diary last day to serve answering brief.
Five days after service of respondent's brief.
(Rule 9.)

Argument

7. Prepare and print answering brief.
 8. *Within five days after receipt of respondent's points.*
 1. Serve three copies of answering brief.
 2. File 16 copies of answering brief with proof of service of three copies on respondent's attorney.
 9. Enter in diary:
 1. Last day to serve notice of argument.
 2. Last day to file note of issue.
Eight days before first day of term. (Rule 39, G. R. P.)
 10. Prepare and serve notice of argument.
 11. Prepare note of issue.
 State date on which notice of appeal served. Claim of preference must be set forth; and copy of order granting preference, if any, must be attached. (Rule 2, Fourth Dept. Rules.)
 12. File note of issue.
 As to reservation and submission of cases and exchange of cases, see Rules 8 and 12.
64. *Argument:*
- There is nothing for counsel to do on day of argument but to answer the call of the calendar and submit the case when called or argue it when reached, except in the Second and Third Departments as hereinbefore indicated. Not more than one counsel shall be heard on each side unless the court otherwise orders, and not more than one hour will be allowed for argument to each side, except by special permission, which is very seldom granted. Number of counsel engaged does not extend time. (Rule 47, G. R. P.) No brief or memorandum will be received after argument, except by special permission, which is rarely granted. (See 128 *App. Div.* 339.)
- Counsel for the appellant argues first. Then counsel for respondent and the court usually permits a few minutes to appellant to close.
- Judgment of reversal by default will not be allowed, but judgment of affirmance may be taken by default.

HINTS ON APPEAL PROCEDURE

II

FROM JUDGMENTS

Supreme Court, Special Term, to Appellate Division

From judgment on decision of judge.

As proposed findings of fact and conclusions of law must be submitted to the court before the argument at the close of the testimony, i. e., final submission of cause (§ 1023, Code, 113 App. Div. 254, aff'd 188 N. Y. 617), time must be obtained from the court to submit same after opinion is given if attorney desires to follow the prevailing practice and preserve his technical right.

1. If any memorandum or opinion given by judge, secure copy of same.
2. Order copy of stenographer's minutes.
3. Get exhibits.
4. If time has been obtained as above indicated, prepare proposed decision, findings of fact, and conclusions of law for submission on settlement of decision. (See § 1022, Code.)

Sec. 1023, Code, provides that before the cause is finally submitted to the court or within such time thereafter and before the decision is rendered, as the court allows, the attorney for either party may submit proposed findings of fact and conclusions of law; and that at or before the time when the decision is rendered, the court must dispose of same.

It has been the practice not to submit proposed findings of fact and conclusions of law until the judge has indicated his determination of the issues. In the First Department this usually appears in the New York Law Journal. In other departments by memorandum filed or correspondence with attorneys. This is dangerous practice, however, as the court may refuse to pass thereon after final submission. (113 App. Div. 254, aff'd 188 N. Y. 617.)

Taking Appeal

5. Submit proposed decision to judge upon settlement.

The judge may make findings or conclusions as requested by both parties; and direct that a fair copy of the decision be presented for signature. In this case it is the duty of the prevailing party to prepare and submit the decision containing findings of facts and conclusions of law in final form incorporating all the facts and conclusions of law indicated as found. (§ 1023, Code.) The defeated party should be careful to see that such of his proposed findings or conclusions as are found by the judge are included in this final form of the decision.

6. If usual stay of execution and additional time to make a case not granted in opinion or memorandum given by judge, apply for same on settlement of decision or move, on notice, for same before judge who tried case.
7. See that decree or judgment contains stay of execution and gives additional time to make and serve case or that time is obtained on motion. Draw and enter order granting stay and additional time to make case. Serve same with notice of entry on adversary.
8. When decision signed, and a copy thereof served with notice of filing, together with a copy of the judgment entered thereon with notice of entry.

Enter in diary:

1. Last day to serve and file exceptions to decision.
Ten days from the service of a copy of the judgment with notice of entry. (§§ 994 and 1351, Code.)
2. Last day to appeal and to serve proposed case.
Thirty days from the service of a copy of the judgment and notice of entry, unless longer time to serve proposed case granted by judge. (§ 1351, Code. Rule 32, G. R. P.)
3. When stay expires.
4. If judgment is interlocutory — last day to move at Appellate Division for new trial. (See § 1001, Code.)
9. Before time expires, prepare notice of exceptions to findings of fact and conclusions of law.

Record on Appeal

This notice must state specifically what portion of the decision, *e. g.*, which findings of fact and conclusions of law are excepted to, and which refusals to find as requested. See Forms, p. 708, *et seq.*

10. Within ten days after receipt of judgment with notice of entry, file exceptions with clerk of court and serve same on attorney for adversary. (§ 994, Code.)

15 to 64 of Appeals from Judgments I (p. 57, *supra*) may now be followed, but in making up the case on appeal the following papers constitute the case:

(See § 997.) As to order, see 105 *App. Div.* 477. Statement under Rule 41.

Notice of appeal.

Pleadings and all papers on file with the judgment roll, in chronological sequence as they appear in the action, viz.:

Summons.

Complaint.

Answer.

Reply.

Order of reference (if any).

Report of referee (if any).

Decision.

Requests to find.

Judgment.

Notice of exceptions.

And any other papers used.

Case:

Evidence.

Exhibits.

The case must also contain a statement that it contains *all the evidence* taken upon the trial of the action.

Stipulation settling case. } See Forms,
Order settling case. } p. 73, *et seq.*

Stipulation waiving certification
or

Certificate of the clerk of the court.

Waiving Certification — Order Filing Record

Stipulation Waiving Certification

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, the judgment roll, and case and exceptions as settled, decision, proposed findings of fact and conclusions of law, exceptions to findings and decisions* and the whole thereof, now on file in the office of the Clerk of the County of (*New York*;) and certification thereof by the Clerk, pursuant to Section 1353 of the Code of Civil Procedure is hereby waived.

Dated, (*New York, September 21, 1916.*)

(*BUDD & BUDD,*)

Attorneys for (*plaintiff*)-appellant.

(*FRED CHOATE,*)

Attorney for (*defendant*)-respondent.

Opinion of the court or referee or affidavit of no opinion.
Order filing record in Appellate Division.

This order is necessary only in appeals heard on a case and exceptions.

Order Directing Filing of Return

Pursuant to Section 1353 of the Code of Civil Procedure, it is ORDERED that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court of the State of New York in and for the First Department.

Dated, (*New York City, September 27, 1916.*)

(*GEORGE V. MULLAN,*)

Justice of Supreme Court, State of New York.

* Insert any other papers not part of the judgment roll, but included in the printed case.

HINTS ON APPEAL PROCEDURE

DEMURRERS

There are four methods of disposing of the issue of law raised by a demurrer. (See Note p. 416.)

1. Disposing of it as the trial of issue of law.
2. As a contested motion. (§ 976, Code.)
3. Motion for judgment on the pleadings. (§ 547, Code.)
4. Motion on the ground that the demurrer is frivolous. (§ 537, Code.)

If method No. 1 (*i. e.*, treating it as the trial of an issue of law) is followed, the party may appeal *not* from the order or decision, but only from the interlocutory or final judgment or both.

If method No. 2, 3 or 4 is followed, the party can appeal directly from the "order" or, if there be a judgment, then from the judgment, or from both judgment and order.

If the first method is pursued, the following hints (III) may be followed, but if method two, three or four is pursued, the following hints (III) do not apply.

III

FROM INTERLOCUTORY JUDGMENT ON DEMURRERS

Supreme Court, Special Term, to Appellate Division

The "order" or "decision" overruling or sustaining a demurrer upon the trial of an issue of law after service of a notice of trial, is not appealable.

An appeal can be taken from the interlocutory judgment entered thereon. The party can, however, appeal from the final judgment and specify the interlocutory judgment in the notice of appeal and thus appeal from both. The usual practice if this method is pursued, is to appeal from the interlocutory judgment.

Where the interlocutory judgment overrules the demurrer with leave to plead upon terms the question arises, what step should be taken where the attorney does not wish to plead but desires to appeal from interlocutory judgment and herein two cases arise:

(A.) Where a demurrer to a complaint is overruled and leave given to answer upon terms with a direction that final judgment be entered upon failure to comply therewith.

In this event the practice is to obtain by written stipulation extension of time of appellant to plead until twenty days after the entry of the order on the determination of the appeal.

(B.) (See page 93.)

Extending Time to Answer Pending Appeal

FORM NO. 1

Stipulation Extending Time to Answer Pending Appeal
NEW YORK SUPREME COURT,
(*Erie*) County.

(*HARRY C. SOMER,*)

Plaintiff,

against

(*THE ASSOCIATED PRINTERS,*)

Defendant.

Interlocutory judgment having been entered herein on the (10th) day of (*May*, 1916) overruling the demurrer of the defendant to the complaint herein with leave to the defendant to withdraw the demurrer and answer within twenty days upon payment of costs and providing that in default of compliance by the defendant with the terms of said interlocutory judgment, final judgment should be entered against the defendant for the relief demanded in the complaint; and the defendant having appealed to the Supreme Court, Appellate Division, (*Fourth*) Department,

It is hereby stipulated that the defendant herein, (*The Associated Printers,*) may have twenty days from the entry and service of judgment on the final determination of the Supreme Court, Appellate Division, (*Fourth*) Department, in this action in which to serve its answer to the complaint of the plaintiff herein.

And it is further stipulated and agreed, that all proceedings herein be stayed pending the determination of said appeal and until the entry and service of said judgment.

It is expressly understood and agreed that the above stipulation is made with the agreement and understanding that said appeal shall be argued at the first day of the next term of said Supreme Court, Appellate Division, (*Fourth*) Department, to wit, the (2nd) day of (*October*, 1916) or as soon thereafter as counsel can be heard.

Dated, (*May* 26, 1916.)

(*H. B. BUTTERFIELD,*)

Attorney for (*Plaintiff,*)

(*CAREY & COOKE,*)

Attorneys for (*Defendant.*)

 Stay Pending Appeal

In case the attorney refuses to so stipulate some attorneys claim a stay of entry of judgment pending the appeal and entry of an order on the determination thereof is the proper practice, since an extension of time to answer obtained from the court is inconsistent with the interposition of the demurrer and appeal therefrom, nevertheless most attorneys, failing to obtain extension to answer by consent as above, obtain from the court an extension of time to answer until twenty days after the entry of an order on the determination of the appeal from the interlocutory judgment.

 FORM NO. 2

 Order Granting Stay Pending Appeal from Interlocutory Judgment
 Overruling Demurrer

 SUPREME COURT,
 (*Erie*) County.

(THE LOCKWOOD COMPANY,)

Plaintiff,

against

(FRANK PRYOR & CALVIN MOTT,)

 Defendants.

Upon reading and filing the annexed affidavit of (*Frank Pryor*,) defendant herein, verified (*July 28, 1916*), and on reading the supplemental summons and complaint herein; the demurrer interposed thereto by the above named defendant; the decision, findings and order of Hon. (*Louis W. Marcus*), overruling the same, and interlocutory judgment entered thereon, in (*Erie*) County Clerks's Office, (*July 9, 1916*), and the proposed notice of appeal from said judgment, to be taken by said defendants, and on motion of (*Charles Kelsey*,) of counsel for said defendants, it is

ORDERED, that all proceedings under and pursuant to said interlocutory judgment be and the same are hereby stayed until the determination of said appeal therefrom, and an entry of an order thereon without security. And it is further

ORDERED, that should the said appeal be affirmed or dis-

Stay Pending Appeal

missed, in either such event, the time of the defendants to serve their answer to the (*supplemental*) complaint, herein, is hereby extended to and until twenty days after the entry of the order of the Appellate Division, on the determination of the said appeal herein.

(CHARLES A. POOLEY,)

J. S. C.

(July 28, 1916.)

FORM NO. 3

Affidavit on Application for Stay Pending Appeal

SUPREME COURT,

(Erie) County.

(THE LOCKWOOD COMPANY,)

Plaintiff,

against

(FRANK PRYOR & CALVIN MOTT,)

Defendants.

STATE OF NEW YORK, }
County of (*Allegany*), } ss.:

(FRANK PRYOR,) being duly sworn, deposes and says: That he resides at (*Albion, New York*,) and is (*an attorney and counselor-at-law, having an office for the practice of law at Albion, aforesaid*;) that deponent is one of the defendants in the above entitled action, and has had a personal knowledge of all proceedings heretofore had herein; that deponent on the (*12th*) day of (*July*, 1916) served a notice of appeal, herein, to the Appellate Division, from the interlocutory judgment entered upon the decision of Mr. Justice (*Louis W. Marcus*,) overruling the demurrer to the (*supplemental*) complaint herein entered in the office of the Clerk of (*Erie*) County, on the (*9th*) day of (*July*, 1916;) that said judgment provides that said demurrer be overruled with leave, however, to said defendants (*Frank Pryor and Calvin Mott*,) within twenty days after the service of a copy of said interlocutory judgment, on payment of costs of said demurrer,

Stay Pending Appeal

to answer the (*supplemental*) complaint herein; and in case of failure of said defendants to comply with the terms of said judgment, said plaintiff should be entirely entitled to final judgment to be determined and entered according to law; that a copy of said interlocutory judgment with a notice of the entry thereof, was served on the attorney for said defendants on the (10th) day of (*July, 1916.*)

Deponent further says, that said demurrer was taken to said (*supplemental*) complaint, upon the ground that it appears on the face thereof, that (*there is a defect in the parties defendant,*) and also upon the ground that said (*supplemental*) complaint does not state a cause of action against defendant;

Deponent further says; that in his opinion after an examination of the authorities, he believes that said demurrer was well taken, that there is a fair reason to believe that said demurrer will be sustained upon said appeal to said Appellate Division. That in case said judgment is affirmed or the appeal is dismissed, the defendant intends in good faith to answer on the merits of the case and that deponent has fully and fairly stated the case to (*Robert Taylor,*) one of his attorneys of record herein who resides at (*155 West Fifty-eighth street in the Borough of Manhattan, City of New York,*) and that defendants have a good and substantial defense to the cause of action pleaded in the complaint or some part thereof upon the merits as he is advised by his said counsel after such statement and verily believes. That said demurring defendants will suffer serious inconvenience, and loss if obliged to answer said complaint, and try said action prior to the determination of said appeal upon said demurrer; (*that a very large sum of money is involved as well as the personal honor and reputation of said deceased defendant*), and therefore this deponent prays for an order staying all proceedings as to said demurring defendants herein, pending and under said appeal, in order that the defendant may not be prejudiced by any proceedings that the plaintiff might take under the judgment he has recovered, and that said stay be granted without security. And deponent also prays for an order granting the defendant twenty days from and after the entry and service of an order of the Appellate Division, upon such appeal, in which to answer the supplemental complaint of the plaintiff in the event that the appeal be affirmed or dismissed.

Taking Appeal

No previous application has been made to any court or judge for the order asked for herein.

(FRANK PRYOR.)

Sworn to before me this
(28th) day of (July, 1916.)
(JAMES HOOD,)

Notary Public,
(Alleghany) County.

(B.) Where a demurrer to a counterclaim is overruled and leave given to reply. Here failure to reply would act as an admission under § 522 of the Code. The practice is not to obtain a stipulation or extension but if the demurrer is sustained upon appeal, to look to the Appellate Division to give the permission to reply.

1. Receive decision signed with notice of entry, together with a copy of the interlocutory judgment entered therein with notice of entry.

Enter in diary "Last day to appeal."

Thirty days from service of a copy of the judgment with notice of entry. (§ 1351, Code.)

2. If any memorandum of opinion by judge, secure copy of same.
3. Draw notice of appeal, see Form, p. 712, *et seq.*
4. File notice of appeal with county clerk. (§ 1300, Code.)
5. Serve notice of appeal. (§ 1300, Code.)
6. Enter in diary:

Last day to serve three copies of printed papers on adversary and to file with clerk of the Appellate Division the original printed papers with proof of service by affidavit of such three copies.

Twenty days after appeal is taken. (Rule 41, G. R. P.)

7. Prepare papers on appeal for printer as follows:
 1. Title for cover.
 2. Index.
 3. Statement under Rule 41.
 4. Notice of appeal.
 5. Summons.
 6. Complaint.
 7. Answer (if one).
 8. Reply.

 Waiving Certification

9. Demurrer.
10. Decision.
11. Interlocutory judgment.
12. Stipulation waiving certification.
13. Opinion or affidavit of no opinion. (Rule 41, G. R. P.)

Stipulation Waiving Certification

Pursuant to section 3301 of the Code of Civil Procedure, it is hereby consented and stipulated by and between the attorneys for the respective parties herein that the foregoing printed papers constitute the record on appeal herein and are true and correct copies of the notice of appeal herein; of the judgment roll entered in the office of the Clerk of the County of (*New York*), on the (*9th*) day of (*July*, 1916) upon the interlocutory judgment (*overruling*) the demurrer of the (*defendants*) to the (*amended complaint*) herein, and of all the papers and proceedings used in the court below upon the hearing of the demurrer, and now on file in the office of the Clerk of the County of (*New York*) and certification thereof pursuant to section 1353 of the Code of Civil Procedure is hereby waived.

Dated, (*July 28*, 1916.)

(*JAMES HOLT*),

Attorney for (*respondent*).

(*ROBERT TAYLOR*),

Attorney for (*appellants*).

8. Send papers on appeal to printer.
9. Receive proof of appeal book.
10. Submit same to opposing counsel for examination and correction with request that he waive certification.
11. Receive proof with corrections and stipulation to waive certification.
12. If attorney refuse to waive certification, strike out stipulation in proof and insert in place thereof form of county clerk's certificate with instruction to leave proper blanks for original signatures in original and unknown dates.

Affidavit of No Opinion

Certificate of Clerk

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

I, (*William F. Schneider*,) Clerk of the Supreme Court in and for said county and Clerk of the Supreme Court of said State, do hereby certify that the foregoing consists of certified copies of the notice of appeal and the judgment roll on file in my office.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this day of, A. D., 19 . . .

(*WILLIAM F. SCHNEIDER*,)

Clerk.

Affidavit of No Opinion

NEW YORK SUPREME COURT,
 (*New York*) County.

(*ALBERT JAMES*,)
 Plaintiff.

vs.

(*WILLIAM SMITH*,)
 Defendant.

STATE OF NEW YORK, }
 . County of (*New York*,) } ss.:

(*Robert Taylor*), being duly sworn, says that he is the attorney for the (*plaintiff*) in the above entitled action; that no opinion was given herein by Mr. Justice (*Marcus*), the trial justice.

(*ROBERT TAYLOR*.)

Sworn to before me, this (*27th*)
 day of (*July*, 1916).

(*HENRY BUNDER*),
 Notary Public,
 (*N. Y.*) Co.

Filing Record in Appellate Division

13. Have stipulation waiving certification signed by respondent's attorney in three copies.
14. If respondent's attorney has declined to sign stipulation waiving certification, have same certified by county clerk. (One cent a folio, 3301 Code, Par. 6.)
15. Within 20 days after appeal is taken, serve three copies of printed papers on attorney for respondent and make affidavit of service. (Rule 41, G. R. P.) See Rules 5 and 6, First Department. In Second Department, see also Enumerated Calendar Rule.
16. Within twenty days after appeal is taken, except in Fourth Department, file original papers on appeal with proof by affidavit of service of three copies on adversary with clerk of Appellate Division.
17. Follow 63-64 of Appeals from Judgments, I, p. 76, *supra*, from here on for practice as to placing appeal on the calendar.

HINTS ON APPEAL PROCEDURE

IV

FROM ORDERS DISPOSING OF MOTIONS FOR JUDGMENT ON THE PLEADINGS

Order granting or denying a motion for judgment on the pleadings under Code. § 547 (before entry of Final Judgment):

Order granting or denying a contested motion for the "trial" or "disposition" of the issue raised by demurrer. (§ 976, Code.) (*People v. Bleecker St. & F. R. R. Co.*, 124 N. Y. Supp. 786; *National Park Bank v. Billings*, 144 App. Div. 536):

Order granting or denying a motion for judgment on the pleadings on the ground that demurrer is frivolous. (§ 537, Code.)

Where the order grants the motion for judgment with leave to serve an answer upon terms, the question arises: What steps should be taken when the attorney does not wish to plead but desires to appeal from the order and does not wish final judgment to be entered until after the determination of the appeal. Two cases arise.

A: Where the motion for judgment is granted with leave given to answer upon terms coupled with a direction that final judgment be entered upon failure to comply therewith.

B: Where a demurrer to a counterclaim is overruled on similar terms for leave given to reply. Here failure to reply would act as an admission under Code, § 522.

The practice under "A" is to obtain by written stipulation extension of time of appellant to plead until twenty days after the entry of the order on the determination of the appeal.

Forms 1, 2 & 3, pages 89 *et seq.*, can readily be adapted for use under these circumstances.

The practice under "B" is not to obtain a stipulation or extension but if the demurrer is sustained upon appeal to look to the Appellate Division to give the leave to reply.

Taking Appeal

1. Receive copy of order (with notice of entry).

Enter in diary:

Last day to appeal, *thirty days from service of a copy of the order with notice of entry.* (§ 1351, Code.)

2. If any memorandum or opinion by judge, secure copy of same.
3. Draw notice of appeal. (See Form, p. 712.)
4. File notice of appeal with County Clerk. (§ 1300, Code.)
5. Serve notice of appeal. (§ 1300, Code.)
6. Enter in diary:

Last day to serve three copies of printed papers on adversary and to file with Clerk of the Appellate Division the original printed papers with proof of service by affidavit of such three copies.

Fifteen days after service of notice of appeal. (Rule 41, G. R. P.)

7. Prepare papers on appeal for printer.

1. Title for cover.
2. Index.
3. Statement under Rule 41.
4. Notice of appeal.
5. Order appealed from.
6. Notice of motion for judgment on pleadings.
7. Summons.
8. Complaint.
9. Answer (if any).
10. Demurrer.
11. Judgment.
12. Stipulation waiving certification.
13. Opinion (or affidavit of no opinion). (Rule 41, G. R. P.)

Stipulation Waiving Certification

Pursuant to section 3301 of the Code of Civil Procedure, it is hereby stipulated that the papers hereinbefore printed consist of true and correct copies of the notice of appeal, the order appealed from and of all the papers used upon the hearing of the motion upon which the order appealed from was made, and of the whole thereof, now on file in the office of the Clerk of the County of (*New York*).

Perfecting Appeal

Certification thereof in pursuance of section 1353 of the Code of Civil Procedure is hereby waived.

Dated, (*New York, November 21, 1916.*)

(*DILLON & RAND,*)

Attorneys for (*Defendant-Appellant.*)

(*JOHN C. SHAW,*)

Attorney for (*Plaintiff-Respondent.*)

Opinion (*or Affidavit of No Opinion.*) (*Rule 41, G. R. P.*)

Affidavit of No Opinion

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*Edward L. Blackman,*) being duly sworn, says: I am one of the attorneys for the (*plaintiff*) herein. The motion appealed from was argued before Hon. (*Edward R. Finch*) at a Special Term, (*Part 1*) of the Supreme Court, held in and for the County of (*New York*) in the (*Borough of Manhattan, City of New York,*) on (*November 9, 1916,*) and no opinion was rendered by said Justice on said motion.*

(*EDWARD L. BLACKMAN.*)

Sworn to before me, this (*24th*)

day of (*November, 1916.*)

(*Ella Doane,*)

Notary Public,

(*New York*) County.

8. Send papers on appeal to printer.
9. Receive proof of appeal book.
10. Submit same to opposing counsel for examination and correction with request to waive certification.
11. Receive proof with corrections and stipulations to waive certification.
12. If attorney refuses to waive certification, strike out stipulation in proof and insert in place thereof form of County Clerk's Certification with instructions to leave blanks for original signature in original and unknown dates.

* "other than the following memorandum":

"Motion for judgment granted with costs with leave to defendant to answer on payment of costs, settle order on notice."

Perfecting Appeal

13. Have stipulation waiving certification signed by deponent's attorney in three copies.
 14. If respondent's attorney has declined to sign stipulation waiving certification, have same certified by County Clerk (one cent a folio). (§ 3301, Code.)
- Follow 15 to 24 of Hints on Appeal Procedure, V, p. 103.



HINTS ON APPEAL PROCEDURE

V

FROM ORDERS

SUPREME COURT, SPECIAL TERM, TO APPELLATE DIVISION

1. Receive copy of order with notice of entry.

If all papers used before the court are not recited in the order or if papers not used or immaterial are recited move for a resettlement of the order.

2. Consult §§ 1347-8, Code, as to whether appeal lies.

3. Enter in diary last day to appeal.

Thirty days after service of copy of order and notice of entry. (§ 1351, Code.)

4. Draw notice of appeal. (See Forms, p. 712, *et seq.* and §§ 1300-1, Code.)

5. Serve notice of appeal; obtain admission of service.

6. File notice of appeal with county clerk. (§ 1300, Code.)

7. Enter in diary last day to serve and file printed papers on appeal.

Fifteen days after service of notice of appeal. (Rule 41, G. R. P.)

Security is not required to *perfect* the appeal.

The appeal does not stay the execution of the order appealed from unless the court, in or from which the appeal is taken, or a judge thereof, makes an order directing such a stay. (See § 1351, Code.)

8. Make up papers on appeal.

These should consist of the notice of appeal, the order appealed from and all other papers used before the court on the motion; and recited in the order appealed from (§ 1353, Code; Rule 41, G. R. P.); together with a copy of the opinion of the court below, or an affidavit that no opinion was given, or that a copy could not be procured. (Rule 41, G. R. P.) Each affidavit or other paper printed upon an appeal from an order must be preceded by a description thereof and must specify on whose behalf it was read; and the name of the affiant must be printed at

Printed Papers

the top of each page containing an affidavit. (Rule 43, G. R. P.)

“Affidavit of James Fox, read in support of motion.”

For Example: “Complaint, read in support of motion.”

On an appeal from an order granting or denying a motion to strike out parts of a pleading as irrelevant, redundant or scandalous, or make a pleading more definite and certain, the portion of the pleading to which the motion relates must be printed in italics. (Rule 43, G. R. P.)

Papers read in support of the motion are usually printed first. Although no statement under Rule 41 is required it is frequently inserted. In the First Department titles and verifications must be printed and set forth in full, but not so in Second Department. (32 *Misc.* 165.)

The papers may be printed in the following order:

Index.

Notice of appeal.

Order appealed from.

Notice of motion or order to show cause.

Affidavits, pleadings or other papers used before the court below.

(Where voluminous documents have been used which are material only as to the fact of their existence or as to a small part of their contents, the parties may, by stipulation, or the court or judge may, upon notice, settle a statement respecting the same or the parts thereof to be returned upon the appeal from the order, to be used in place of the original documents.

(Rule 34, G. R. P.)

Certificate of clerk, or

Stipulation that papers are true copies of the paper used in the court below, and waiving certification.

Opinion or affidavit of no opinion.

Stipulation Waiving Certification

Pursuant to section 3301 of the Code of Civil Procedure, it is hereby stipulated that the papers as hereinbefore printed consist of true and correct copies of the notice

Filing Papers in Appellate Division

of appeal, the order appealed from and all the papers used before the court (judge or justice) below upon the motion, and the whole thereof now on file in the office of the clerk of the county of (*New York.*)

Certification thereof, pursuant to section 1353 of the Code of Civil Procedure, is hereby waived.

Dated, (*December 20, 1915.*)

(*MORTIMER MORTON,*)

Attorney for Defendant-Appellant.

(*CHARLES FROTHINGHAM,*)

Attorney for Plaintiff-Respondent.

9. Send papers on appeal to printer and receive proof.
10. Submit proof to attorney for respondent for corrections.
11. Receive proof with adversary's corrections.
12. Have papers on appeal printed. (Rule 43, G. R. P.)
13. Submit three copies of printed papers, with blanks for signatures, to attorney for respondent, and have stipulation waiving certification signed.
14. If respondent's attorney refuses to so stipulate have papers certified by the clerk and apply on affidavit to court *ex parte* for extension of time to file papers on appeal.
15. Before time expires: *
 - (1) Serve three copies of printed papers on appeal on respondent's attorney, and receive admission of service, or make affidavit of service. (Rule 41, G. R. P.; Rule IV, App. Div., First Dept.)
 - (2) File one copy of original printed papers on appeal, with proof of service of three copies, together with the required number of copies, with clerk of Appellate Division.

In First Dept. it is customary to file the nineteen copies with notice of argument and note of issue. The nineteen copies *must* be filed at least eight days before the day for which appeal is noticed for argument. (Rule IV.)

In the Second Dept. seventeen copies of papers on appeal must be delivered to the clerk before the commencement of argument.

* Consult special rules of each Department.

Calendar Practice—Appellate Division

In Third Dept. thirteen copies must be delivered in the same way.

In Fourth Dept. sixteen copies must be filed at least eight days before day for which appeal is noticed.

16. Enter in diary the following dates:

- (1) Next motion day on which appeal can be heard:
First Department.—On the first and third Fridays succeeding first and third Monday of the month.
(Rule II, First Dept.)
Last day to file notice of argument and nineteen copies of printed papers.
Eight days before day for which cause is noticed.
(Rule 4, First Dept.)
- (2) Second Department.—On the first Monday and second Friday of the term. (Rule 4.)
Third Department.—On the first day of the term or any succeeding Tuesday. (Rules 1 and 2.)
Fourth Department.—On the first day of the term.
(Rule 13.)
Submission of appeals from the non-enumerated calendar will be received on any day during the term.
- (3) Last day to serve notice of argument.
Eight days before day for which cause is noticed.
This should be done earlier, as the last day to file the notice of argument with proof of service expires on this day.
- (4) Last day to file note of issue.
Eight days before day for which cause is noticed.
(Rule 39, G. R. P.; Rule 4, First Dept.; Rule 7, Second Dept.; “Notice to attorneys,” Third Dept.; in the Fourth Dept. special attention is called to Rule 1.)

17. Prepare notice of argument.

18. Serve notice of argument and obtain admission of service.
At least eight days before the commencement of the term for which case is noticed. (Rule 39, G. R. P.)

Argument

19. Draw note of issue stating date upon which notice of appeal was served. If the appeal is in the Second, Third or Fourth Departments, it must also state that the cause is to be placed upon the non-enumerated calendar. (Rule 7, Second Dept.; Rule 1, Third Dept.; Rule 1, Fourth Dept.)
20. Before time expires file note of issue; and in the First Department file also nineteen copies of printed papers, and notice of argument with proof of service.
Eight days before commencement of the term for which case is noticed. (Rule 39, G. R. P.; Rule 4, First Dept.; Rule 7, Second Dept.; “Notice to Attorneys,” Third Dept.; Rule 1, Fourth Dept.)
21. Prepare and print points. (See Rule 43, G. R. P.)
As to form, citations, quotation of statutes, and endorsement of name of counsel who is to make argument, see Rule X, Second Dept.; Rules 9 and 10, Third Dept.; Rules 10 and 11, Fourth Dept.
22. If cause is not to be argued on day noticed for, obtain written stipulation setting cause down for subsequent motion day, and file same on the day prior to that for which cause was noticed. (In the First Department this stipulation must be filed before 3 P. M., Rule IV. In the Second Department, before 1 P. M., but for a day not later than the first week of the term; Rule V.) (See Rule 6, Third Dept., and Rules 12 and 13, Fourth Dept., as to exchange of cases and other matters.)
23. Attend for argument:
Before argument:
Deliver copies of printed papers to clerk.
Note.—In First Dept. these papers are already on file; in Second Dept., sixteen copies; in Third and Fourth Depts., thirteen copies.
Deliver copies of points to clerk:
In First and Second Depts., seventeen copies; in Third and Fourth Depts., thirteen copies.
Deliver three copies of points to respondent’s counsel.

Argument

24. Argument.

In the First Department not more than fifteen minutes will be allowed to each side. (Rule III.) In the other departments not more than thirty minutes will be allowed. In the First Department appeals from orders which have been placed on the calendar may, with the approval of the court, be submitted on any day by delivering to and leaving with the clerk the requisite number of copies of the points. (Rule III.)

HINTS ON APPEAL PROCEDURE

FROM SURROGATE'S COURT

The determination of the rights of the parties to a special proceeding in a surrogate's court, is a decree.

A direction of a surrogate's court made or entered in writing and not included in a decree, is an order.

An appeal may be taken in the following instances:

1. From a decree made after a case has been tried by the surrogate himself.
2. From a decree in a case in which the surrogate tried the case with the aid of testimony taken for him by a referee.
3. From a decree in either of the above instances where the surrogate directs findings of fact and conclusions of law to be made.
4. From a decree based on a report made after a trial had before a referee with power to hear and determine.
5. From a decree after trial before the surrogate with the aid of a jury in the surrogate's court.
6. From a decree in a case in which the surrogate sends the issues to the Supreme Court to be tried before a jury.
7. From an order of the surrogate.
8. From an order of the surrogate based on a transfer tax appraiser's report.

It would be unwise and without the scope of this book to set forth in detail all the steps and hints as to each and every one of these variations in the appeal practice. It has therefore been deemed sufficient to take the instance of an appeal from the surrogate's decree after the trial of an issue before him without a jury as a general guide. Another reason for pursuing this course is that there is as yet no common practice established in regard to some of these various appeals; the law being now in a state of development necessitated by the recent changes in the surrogate's court practice. (See decision of Surrogate

Appeals From Decrees and Orders

Fowler in the *Matter of Fanny M. Dorsey*, *N. Y. Law Journal*, April 21, 1916.)

On appeals from orders of the surrogate the Hints on Appeal Procedure from Orders of the Supreme Court, may be consulted and assistance obtained therefrom.

It would seem to be the practice where a case is heard by a referee to hear and determine, to have the referee make findings of fact and conclusions of law. Exceptions thereto and to refusals to find are filed and thereupon the surrogate makes a decision without specific findings of fact or conclusions of law, upon which the decree is entered.

For convenience, section 2536, C. C. P., is here set forth:

“ In a special proceeding other than one instituted for probate of a will and subject to the right of trial by jury of any question of fact the surrogate may, in his discretion, appoint a referee to take and report to the surrogate the evidence upon the facts, or upon a specific question of fact; to examine an account rendered; to hear and determine all questions, arising upon the settlement of such an account, which the surrogate has power to determine; and to make a report thereon; subject, however, to confirmation or modification by the surrogate. But no referee to examine an account rendered, whether intermediate or final, or to hear and determine all questions arising upon the settlement of such an account, shall be appointed where the estate or fund does not exceed one thousand dollars in value, or in any case, where the item or items in such account to which objections have been made do not aggregate more than two hundred dollars. Such a referee has the same power, and is entitled to the same compensation as a referee appointed by the Supreme Court, for the trial of an issue of fact in an action; and the provisions of this act, applicable to a reference by the Supreme Court, apply to a reference, made as prescribed in this section, so far as they can be applied in substance without regard to the form of proceeding. The surrogate of the county of New York may, on the written consent of all the parties appearing in a probate case, appoint a referee, or may, in his discretion, direct an assistant to take and report the testimony, but without

Appeals From Decrees and Orders

authority to pass upon the issues involved therein. Unless a referee's report is passed upon and confirmed, approved, modified or rejected by a surrogate within ninety days after it has been submitted to him, it shall be deemed to have been confirmed as of course and a decree to that effect may be entered by any party interested in the proceeding upon two days' notice."

The following quotation from *Matter of Yetta*, 44 App. Div. 406, is given without attempting to state how much of that decision still regulates the practice.

Section * 2545 of the Code of Civil Procedure provides:

"An exception may be taken to a ruling by a surrogate, upon the trial by him of an issue of fact, including a finding, or a refusal to find, upon a question of fact, in a case where such an exception may be taken to a ruling of the court upon a trial without a jury of an issue of fact as prescribed in article third of title first of chapter tenth of this act. * * * Upon such a trial the surrogate must file in his office his decision in writing, which must state separately the facts found and the conclusions of law. Either party may, upon the settlement of a case, request a finding upon any question of fact, or a ruling upon any question of law; and an exception may be taken to such a finding or ruling, or to a refusal to find or rule accordingly. An appeal from a decree or an order of a surrogate's court brings up for review by each court to which the appeal is carried each decision to which an exception is duly taken by the appellant as prescribed in this section."

Section †2546 of the Code gives the surrogate authority, in a special proceeding other than one instituted for probate or revocation of probate of a will, to appoint a referee "to take and report to the surrogate the evidence upon the facts, or upon a specific question of fact; to examine an account rendered; to hear and determine all questions arising upon the settlement of an account, which the surrogate has power to determine; and to make a report thereon; subject, however, to confirmation or modification by the

* Now embodied in revised sections 2541, 2542 and 2757.

† Now § 2536.

Decision

surrogate." The section further provides that "the provisions of this act, applicable to a reference by the Supreme Court, apply to a reference made as prescribed in this section, so far as they can be applied in substance without regard to the form of proceeding."

The meaning of these provisions seems clear. When the surrogate himself takes the testimony and tries the issues of fact, he must make a decision containing specific findings, and the appellant must file the required exceptions if he desires an effective review. This also applies to a case where a reference is ordered merely to take and report the evidence. *The surrogate himself then tries the issue, using the reported evidence as an aid.* Where, however, a reference is ordered to hear and determine, there is no trial of the issues by the surrogate within the meaning of section 2545. He may still, it is true, as the section provides, deny confirmation or modify the report. But his action in that regard is in its nature appellate or supervisory, not original. In such cases section 2546 clearly governs. The intention was to conform the practice upon accountings to the ordinary practice in such matters in the Supreme Court. It certainly was not intended upon such accountings to have two primary trials — one by the referee and another by the surrogate, with two sets of findings and two sets of exceptions. Such a view would deprive section 2546 of all force, would impose upon the surrogate much of the very labor which the reference was provided to save him, and would inflict upon the parties an unnecessary and useless multiplication of routine work. We say useless because in such a case a second set of exceptions would be quite needless to point out to the appellate court the specific error complained of. When the referee in such a case makes separate findings, numbering them properly, and exceptions are duly filed to one or more of such findings, the surrogate, upon the hearing, sustains or overrules each of the numbered exceptions to the numbered findings, and his decree thereupon shows upon its face precisely what is the subject of further review. No difficulty that we are aware of has ever been experienced on this head in the Supreme Court, and we can see no reason why that practice may not here, as the section directs, be "applied in substance."

HINTS ON APPEAL PROCEDURE

VI

FROM DECREE OF SURROGATE, NEW YORK COUNTY, TO APPELLATE DIVISION, FIRST DEPARTMENT

The following is the procedure to be followed upon an appeal from the decree of a surrogate, after a trial before him without a jury.

It is provided by § 2541, Code, that upon a trial before the surrogate without a jury, the surrogate must file in his office his decision in writing which shall direct the decree to be entered.

The decree need contain neither the facts found or the conclusions of law, and no party shall have the right after close of the trial to request a finding upon any question of fact or a ruling upon a question of law. The one exception, however, is where the surrogate directs in the decision that the decree shall contain findings of fact and conclusions of law (*e. g.*, see 89 *Misc.* 711). This, however, is rare. Therefore, the following suggested steps contemplate that no such direction has been ordered to be contained in the decision.

The change in the law, doing away with the necessity of findings, was made in 1914. By this change it was intended to do away with useless findings and the resulting miscarriage of justice often brought about by error in the findings or refusals to find specific facts. If each case goes upon a general verdict, the Appellate Division can do justice.

It is also provided by § 2541, Code, that for the purposes of appeal, the decree made by the surrogate upon such trial by him of an issue of fact shall have the same effect as the general verdict of a jury would have if the same issues were triable before a court and a jury and were so tried and a general verdict rendered thereon.

It should be borne in mind that by § 2763, Code, it is provided where an appeal is taken upon the facts, the appellate court has the same power to decide the question of fact which the surrogate had, and it may in its discretion,

Taking Appeal—Undertaking

receive further testimony or documentary evidence and appoint a referee.

The appellate court may reverse, affirm, or modify, the decree or order appealed from, and each intermediate order, specified in the notice of appeal, which it is authorized by law to review, and as to any or all of the parties; and it may, if necessary or proper, grant a new trial or hearing. Upon an appeal from a determination of the surrogate, made upon an application pursuant to subdivision six of § 2490, Code, the appellate court has the same power as the surrogate, and his determination must be reviewed as if an original application were made to that court. The decree or order appealed from may be enforced, or restitution may be awarded, as the case requires, as prescribed in title first of chapter twelfth of the Code, with respect to an appeal from a judgment.

1. Upon receipt of decree with notice of filing and entry.

Enter in diary:

- (1) Last day to serve and file exceptions to decision.
Ten days from the service of a copy of decree and notice of entry. (§§ 2542, 994, Code.)
- (2) Last day to serve notice of appeal. *Thirty days after service of a copy of the decree with notice of entry.* (§§ 2756, 2757, Code.)

2. If any memorandum of opinion given by surrogate, secure copy of same.
3. Order stenographer's minutes.
4. Get exhibits.
5. Prepare notice of appeal.

See § 2756, Code; 135 *N. Y.* 413; 92 *App. Div.* 462; and Form, p. 712, *et seq.*

Each party who has appeared in the special proceedings in the Surrogate's Court must be made a party to the appeal. (§ 2756, Code.)

6. Have amount of undertaking fixed, if necessary. (§§ 2760, 2761, 2762, Code.)

Undertaking for a sum not exceeding \$250 is required to perfect the appeal (or in fact to render the notice of appeal effectual for any purpose), except where it is

Staying Execution

especially prescribed by law that security to perfect an appeal is not necessary. (§ 2759, Code.) Whether this undertaking can be included in the undertaking required by other sections will be considered below.

In cases prescribed in § 2760, Code, to perfect the appeal and to stay the execution of the decree appealed from, the appellant must give undertaking in the sum therein specified, *fixed* by the surrogate or by a judge of the appellate court, to the effect that if the decree or order, or any part thereof, is affirmed or appeal is dismissed, the appellant will pay all costs and damages which may be awarded against him upon the appeal and will pay the sum so directed to be paid or collected, or as the case requires, will deposit or distribute the money or deliver the property so directed to be deposited, distributed or delivered, or the part thereof, as to which the decree or order is affirmed.

An appeal from a decree or an order directing the commitment of an executor, administrator, testamentary trustee, guardian or other person appointed by the Surrogate's Court, or any attorney or counsel employed therein, for disobedience to a direction of the surrogate, or for neglect of duty, or directing the commitment of a person refusing to obey a subpoena or to testify when required according to law, does not stay the execution of the decree or order appealed from unless the appellant gives the undertaking required by § 2761, which must be *fixed* by the surrogate.

In the cases mentioned in § 2761, Code, to stay the execution of the decree or order appealed from, the appellant must give an undertaking in the sum therein specified, *fixed* by the surrogate or by a judge of the appellate court, to the effect that if the decree or order appealed from, or any part thereof, is affirmed or the appeal is dismissed, the appellant will, within twenty days after the affirmance or dismissal, surrender himself in obedience to the decree or order to the custody of the sheriff of the county wherein he was directed to be committed.

An appeal from a decree of a surrogate (§ 2557, Code) admitting a will to probate or granting letters

Exceptions to Decision

testamentary or letters of administration, does not stay the issuing of letters where in the opinion of the surrogate manifested by an order, the preservation of the estate requires that letters should issue. (§ 2557, Code.)

An appeal from a decree revoking letters testamentary, letters of administration or letters of guardianship or from a decree or an order suspending an executor, administrator or guardian or removing or suspending a testamentary trustee or appointing a temporary administrator or appraiser of personal property, does not stay the execution of the decree or order appealed from.

Except in the above-mentioned cases, a perfected appeal operates as a stay of the proceedings to enforce the decree or order appealed from, prescribed in § 1310 of the Code, with respect to a perfected appeal from a judgment. (§ 2557, Code.)

As to what court has jurisdiction after an appeal has been perfected, see *Matter of Murphy*, 79 App. Div. 541.

7. Prepare undertaking or arrange with such company for same.
8. Prepare exceptions to decision.

Since the amendment of 1914, there is some doubt as to whether exceptions to a decision not containing findings of fact and conclusions of law must be made and filed. Section 2542 provides that an exception may be taken to a ruling by a surrogate upon the trial by him of an issue of fact in a case where such exception may be taken to a ruling of the court upon a trial without a jury, of an issue of fact as prescribed in article 3d of title 1st of chapter 10 of the Code. That article includes §§ 992 to 1007, inclusive, of the Code, but §§ 992-994 only are applicable, and it is provided by § 2542 that the provisions of that article, relating to the manner and effect of taking such an exception, apply to such a trial before a surrogate, for which purpose the decree is regarded as a judgment and notice of an exception may be filed in the surrogate's office. Notwithstanding this doubt, it is a safe practice to file and serve a notice of exception to the decision. (See Forms, pp. 708 *et seq.*)

Perfecting Appeal

9. Before time expires, serve notice of exceptions *ten days from service of copy of decision and notice of entry.* (§§ 2541, 2542, 2757, 994, Code.)
10. Have undertaking or undertakings approved as to form and sufficiency by the surrogate. (§§ 2759, 2762, Code.)
11. Prepare notice of appeal. (§§ 2756, 2757, 1295 to 1299, both inclusive, §§ 1301 to 1303 and §§ 1305 to 1309, Code, both inclusive.)
12. File undertaking and notice of appeal in office of the clerk of the surrogate's court before time to do so expires.
Thirty days after service of decree and notice of entry.
(§§ 2756, 2759, 2762, Code.)
13. Apply for additional time to make and serve case upon settlement of decision and decree.
14. Enter order granting additional time.
15. Serve order with notice of entry.
16. Serve notice of appeal and copy of undertaking with notice of filing on respondent's attorney before time to do so expires.
Thirty days after service of decree and notice of entry.
(§§ 1307, 2756, Code.)
17. Enter in diary last day for respondent to except to sureties.
Ten days after filing of undertaking. (Rule 17, Surr. Ct. N. Y. Co.)
18. Receive notice of exception to sureties.
19. Enter in diary last day for sureties to justify.
Ten days after notice of exception is received. (Rule 17, Surr. Ct., N. Y. Co.)
20. Prepare notice of justification.
Five days' notice must be given. (Justification is had before a surrogate or a clerk designated for that purpose.)
21. Serve notice of justification.
22. Enter in diary date of justification.
23. Attend upon justification.
24. If sureties found sufficient, have allowance endorsed on undertaking, or copy. (§ 2762, Rule 17, Surr. Ct., N. Y. Co.)
25. Serve notice of allowance upon attorney for exceptant.
(Rule 17, Surr. Ct., N. Y. Co.)
26. See whether respondent has filed a transcript of the decree in county clerk's office and docketed same. (§§ 2499, 2551, Code.)

Proposed Case

27. If extension of time to make and serve case needed, or if extension by stipulation has been had and further time is needed, ask adversary to stipulate for same *three* days before time to serve case expires. *This is very important*, as the court rules provide that "no order extending the time to serve a case, or the time within which the amendments thereto may be served, shall be made, unless the party applying for such order serve a notice of *two* days upon the adverse parties of his intention to apply therefor, stating the time and place of making such application." (See Rules 32 and 33, G. R. P.)
28. If extension by stipulation refused, apply to surrogate for same on two days' notice. (Rule 32, G. R. P.; §§ 781, 783, Code. See 25 *How. Pr.* 438.)
29. Obtain order extending time and serve same with notice of entry.
30. Get opinion or memorandum of surrogate, if one filed, or make affidavit that none was given, or if given that copy cannot be procured. (Rule 41, G. R. P.)
31. Receive stenographer's minutes of trial.
32. Determine at this point whether the appeal is to be treated as an enumerated or a non-enumerated motion and whether a case is necessary. (See Rule 38, G. R. P., §§ 2542, 2757. *Code.*)
33. When necessary prepare proposed case before time to do so expires.
 §§ 1353, 997 and 2757, Code; Rules 32, 33, 34, 41, G. R. P. As to whether a case is necessary, *e. g.*, where the appellant is satisfied with the rulings made on the trial (and with the findings of fact, if any there be) and desires only to review the conclusions of law based thereon, see § 998, Code, 103 *N. Y.* 658; 11 *App. Div.* 316.

The Appellate Division assumes in such a case that there was no evidence from which any other facts could have been found. (135 *N. Y.* 209; 147 *N. Y.* 580.)

The case must contain:

All the evidence by question and answer, the rulings of the court and the exceptions of all the parties. (G. R. P. 34. But see 92 *Misc.* 47, and p. 160.)

So much of the evidence and other proceedings upon the trial as is necessary to present the questions of law upon

Proposed Case

which exceptions were taken at the trial and also the exceptions taken by the party making the case;

So much of the evidence as is material to the questions to be raised; and if the question of weight of evidence is to be reviewed, *a statement that the case contains all the evidence* taken on the trial. (See § 997, Code.)

The parties may agree on the facts proven to be inserted in the case, instead of the testimony on the approval of the surrogate. (Rule 32, G. R. P.)

If a motion to postpone the trial was made and denied the affidavits used in support thereof form a proper part of the case to present the action taken below for review. The case should contain only the papers that were before the surrogate when the motion was decided.

No more evidence should be inserted in the case than is material to the questions to be raised and the surrogate should strike out all evidence and other matter not properly inserted. The reasons of the surrogate have no place in the case.

The case should not contain questions withdrawn or answers excluded without objection.

Exhibits should not be printed at length unless the surrogate so directs. (Rule 34, G. R. P.)

When a document is excluded which has been offered in evidence, the entire writing rejected or a sufficient statement of its contents should be included.

If only questions of law are to be raised, all the evidence should not be inserted but only so much as is material to the questions to be reviewed.

The theory of the proposed case is that the appellant will insert all the evidence bearing upon the questions to be raised and the respondent add all he deems necessary to a solution of such questions.

An exception gives notice to the respondent of an intention to raise the questions and put the burden on the respondent of adding any needed proof.

If the proposed case does not contain a statement that it contains *all the evidence*, the respondent may assume that only questions of law are to be raised; but if the case contains such a statement the respondent must see that nothing essential is omitted.

Proposed Case

The lines of each page of the proposed case should be numbered. (Rule 32, G. R. P.)

The following method is suggested for preparing a proposed case:

Proposed Case

SURROGATES' COURT,
County of (*New York*.)

IN THE MATTER of the (<i>Estate of JOHN SMITH</i> ,) Deceased.

Sir:

PLEASE TAKE NOTICE that the following is the proposed case on appeal of (*William Ford, the executor*) and appellant herein.

Dated, (*New York, December 10, 1915.*)

Yours, etc.,

(*FRANK DOWD*),

Attorney for (*Appellant*.)

To Messrs.:

(*BUDD & BUDD*),

Attorneys for (*Petitioners*.)

The foregoing notice is usually on a separate sheet from the proposed case proper.

(Here insert statement under Rule 41 and then add):

Notice of Appeal:

Citation.

Petition.

Affidavits.

Exhibits.

Order to show cause why executor should not be removed.

Answer of (*William Ford*).

Affidavits and order to show cause dated (*November 22, 1915*), for leave to amend petition.

Proposed Case

Order granting leave to amend petition. Dated,
(*December 10, 1916,*) and copy of amended
petition.

Answer of *William Ford* to amended petition.

(Any other petitions, orders, etc. — identifying
them.)

Minutes of trial.

Surrogate's decision.

Decree.

Notice of exception.

Surrogate's opinion.

CASE

SURROGATE'S COURT,

(*New York*) County.

IN THE MATTER

of the

(*Estate of JOHN SMITH,*) Deceased.

The executors above-named having filed their account in the office of the Clerk of the Surrogate of the County of (*New York*) on the (*15th*) day of (*October, 1916*) and objections thereto having been filed by various creditors, and this proceeding having come on for trial before (*Hon. Robert L. Fowler,*) one of the Surrogates of the County of (*New York,*) the following proceedings were had:

Appearances:

(*Frank David,*) Esq., for (*William Ford.*)

Messrs. (*Budd & Budd,*) for Petitioner.

(Insert any stipulations from record.)

Then the minutes of the trial.

At the close of the proposed case the following statement should appear:

"The foregoing contains all the testimony taken and proceedings had upon the trial of this proceeding."

34. Serve proposed case on attorney for respondent before time to do so expires.

Thirty days after service of decree with notice of entry.
(Rule 32, G. R. P.)

Proposed Amendments

35. Enter in diary last day to receive amendments.

Ten days after service of proposed case. (Rule 32, G. R. P.)

36. Receive proposed amendments.

Bear in mind, that if respondent applies to you on last day to serve proposed amendments for an extension of time therefor that it is too late for him to obtain such extension from the court if you refuse same, as two days' notice is required. (Rules 32 and 33, G. R. P.)

The following is the usual form of such amendments:

Proposed Amendments

SURROGATES' COURT

(*New York*) County.

IN THE MATTER of the (<i>Estate of JOHN SMITH,</i>) Deceased.
--

Sir:

PLEASE TAKE NOTICE that the (*petitioner*) herein proposes the following amendments to the proposed case containing exceptions heretofore served by the (*executor*) and appellant herein, viz.:

First Amendment. — At (*page 7, line 22,*) strike out the words ("*to which, ruling defendant duly excepted.*")

Second Amendment. — At (*page 8, line 9,*) strike out word ("*stocks*") and insert the word ("*bonds.*")

Third Amendment. — At (*page 11, line 4,*) after the words ("*without notice to me*") add ("*except as I heretofore stated.*")

Fourth Amendment. — At (*page 11, line 9,*) insert after the word, ("*will*") the word ("*not.*")

(*BUDD & BUDD,*)

Attorneys for (*Petitioner.*)

To (*FRANK DOWD,*) Esq.,

Attorney for the (*Executor.*)

Settlement of Case

Indorsement on Amendments

SURROGATES' COURT

(New York) County.

IN THE MATTER of the (<i>Estate of JOHN SMITH,</i>) Deceased.

Sir:

PLEASE TAKE NOTICE that the within is a copy of the amendments proposed by the (*petitioner*) and respondent to the case proposed by the (*executor*) and appellant in this proceeding.

Dated, (*New York, September 15, 1916.*)

(BUDD & BUDD,)

Attorneys for (*Petitioner.*)To (*FRANK DOWD,*) Esq.,Attorney for (*Executor.*)

37. Enter in diary last day to serve notice of settlement.
Within four days after service of proposed amendments.
(Rule 32, G. R. P.)
38. If proposed amendments are served mark them "allowed" or "disallowed." (Rule 32, G. R. P.)
39. Draw notice of settlement of case and exceptions before the Surrogate and serve within four days from service of proposed amendments. The date of settlement stated therein must be not *less than four nor more than ten days* after service of notice. (Rule 32, G. R. P.; § 997, Code.)

 Notice of Settlement

Notice of Settlement

SURROGATES' COURT

(New York) County.

IN THE MATTER of the (Estate of JOHN SMITH,) Deceased.
--

Sir:

TAKE NOTICE that the proposed case in this proceeding with the proposed amendments will be submitted to Honorable (*Robert L. Fowler*), Surrogate before whom the trial herein was had, for settlement at his Chambers in the (*Hall of Records*), in the (*Borough of Manhattan, City of New York*), on the (25th) day of (*September, 1916*) at 10:30 A. M.

 Dated, (*New York, September 21, 1916.*)

Yours, etc.,

(FRANK DOWD,)

 Attorney for (*Executor.*)

To:

 Messrs. (*BUDD & BUDD*.)

 Attorneys for (*Petitioner.*)

40. Enter in diary date of settlement.

41. Prepare memorandum for Surrogate on settlement, and note that amendments must contain references to pages of stenographer's minutes. (Rule 32, G. R. P.)

42. Settlement. (Rule 32, 34, G. R. P.; § 997, Code.)

Submit to Surrogate on settlement:

1. Proposed case.
2. Proposed amendments.
3. Stenographer's minutes of trial.
4. Exhibits or models.
5. Memorandum as to settlement.

The settlement itself is usually informal. Affidavits may be presented. The Surrogate's recollection assisted by the stenographer's minutes controls. Where there is a dispute, see 34 *Hun*, 547; 112 *N. Y.* 592; 40 *App. Div.* 86.

The Printed Case on Appeal

On re-settlement, see 112 *N. Y.* 592; 119 *N. Y.* 633; 34 *Hun.* 547; 7 *N. Y. Supp.* 321; 7 *N. Y. Supp.* 69; 28 *App. Div.* 504; 35 *App. Div.* 379; 152 *N. Y. Supp.* 197.

43. See that the Surrogate signs an order settling the case and ordering it on file.

This order is usually endorsed by the Surrogate on the original proposed case submitted to him.

44. When case settled, obtain original proposed case and amendments submitted, *i. e.*, the proposed case with amendments marked "allowed" and "disallowed" by the attorney and the Surrogate with order settling and filing same and exhibits and models. It is the prevailing practice to proceed at once to print the case and to file a copy of the printed case in lieu of the original settled case by stipulation between the attorneys.

45. Enter in diary last day to serve three copies of printed case on adversary and to file with the Clerk of Appellate Division the original printed case with proof of service by affidavit of such three copies.

Twenty days after settlement. (Rule 41, G. R. P.)

46. Prepare papers for printer. In arranging papers in a case on appeal, from a decree, note the following:

The name describing each paper should be placed at the top thereof.

An index is necessary. (Rule 43, G. R. P.) It must specify all papers, and give names of all witnesses, and the designation by the stenographer by number of all exhibits, and the number of the page in the case where they appear.

At the top of each page of the case must be printed the name of the witness then testifying and of the party calling him and indicating whether the examination is direct, cross or re-direct.

The nature of each exhibit should be indicated by a concise description, and the folio at which it was admitted in evidence given.

Titles of papers should be arranged alphabetically and names of witnesses alphabetically or chronologically.

The stenographer's designation of the exhibits by letter

The Printed Case on Appeal

or number should control the order in which they are to be printed.

While Rule 41 requires merely that the statement thereunder should contain the time of the beginning of the action and of the service of the respective pleadings, the names of the original parties in full, and any change in the parties if such has taken place, it is the practice and very wise that this statement should be very full, and should give a concise history of the steps of the proceeding, even though not required by the rule as, for instance, any change that has taken place in the attorneys for any of the parties to the proceeding.

Statement Under Rule 41

SURROGATES' COURT,
(*New York*) County.

IN THE MATTER of the (<i>Estate of JOHN SMITH,</i>) Deceased.

STATEMENT UNDER RULE 41

This proceeding was commenced by the filing of a petition asking for the revocation of letters testamentary issued to (*William Smith, as executor*) of the estate of (*James Smith,*) deceased, by (*Eliza Smith, petitioner,*) in the office of the Clerk of the Surrogate's Court, (*New York*) County, on (*March 6, 1915.*) The original parties to this proceeding were the (*petitioner, Eliza Smith,*) who appeared by (*George O. Johns,*) Esq., her attorney; and the (*respondent, William Smith,*) who appeared by (*Thomas Johnston,*) Esq., his attorney. The answer of (*William Smith*) was served on (*April 3, 1915.*) Upon (*May 6, 1915,*) an order to show cause was issued out of this court returnable on (*May 10, 1915,*) for leave to amend the petition herein, and upon the return of said order an order was entered granting leave to amend the

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petition. The answer of (*William Smith*) to the amendatory petition herein was served on (*May 15, 1915.*) On (*January 5, 1916,*) a decree was entered herein revoking the letters testamentary to (*William Smith.*) By an order entered herein on (*May 9, 1915, Messrs. Duston & Wilcox*) were substituted for (*George O. Johns,*) as attorneys for the (*petitioner.*) There has been no change of parties or attorneys herein except as above stated.

Notice of Appeal.

Pleadings, and all papers on file with the decree, *i. e.:*

Citations.

Petitions.

Answers, etc.

It is impossible to give here in detail the papers which should be included in the printed case in the order in which they should appear, but as a useful general rule and guide the following is suggested. As to order, see 105 *App. Div.* 476.

Index.

Statement under Rule 41.

Notice of Appeal.

The various papers that go to make up the printed case in chronological order, including any exhibits attached thereto:

Decision.

Decree appealed from.

Exceptions to decree.

Case with statement contained therein, that it contains all the evidence.

Exhibits.

Bill of costs and affidavits opposing taxation (if material to any question raised on appeal).

Opinion of Surrogate or affidavit of no opinion.

Stipulation settling case.

Order settling case and ordering it on file.

Stipulation waiving certification or certificate of clerk.

Order filing printed record in Appellate Division.

Stipulation, Settling Case — Order

Stipulation Settling Case

IT IS HEREBY STIPULATED that the foregoing case on appeal contains all the evidence taken and proceedings had upon the trial of this proceeding and that the same be settled, signed and ordered to be filed and annexed to the decree, and the papers upon which said decree was entered in this proceeding.

Dated, (*New York, September 1, 1916.*)

(BUDD & BUDD,)

Attorneys for (*petitioners.*)

(JAMES IRVING,)

Attorney for (*respondent.*)

Order Settling Case

Upon the foregoing stipulation it is hereby ordered, that the foregoing printed case which contains all the evidence given and proceedings had upon the trial of this proceeding be settled and filed herein as the original case on appeal, and annexed to the decree entered in this proceeding and to the papers upon which said decree was entered.

Dated, (*New York, September 15, 1916.*)

(ROBERT L. FOWLER,)

Surrogate.

Where there is no case made and settled, the above stipulation and order do not apply and are not necessary.

In such case the only requirement to be fulfilled is to have a stipulation of waiver of certification or a certificate of the clerk.

Waiving Certification

Stipulation Waiving Certification

(Where Case Made.)

Pursuant to § 3301 of the Code of Civil Procedure,
IT IS HEREBY STIPULATED that the foregoing consists of true and correct copies of the notice of appeal, the decree, the papers upon which said decree was entered, and the case and exceptions as settled, and all the papers and testimony upon which the surrogate acted in making the decree appealed from,* and the whole thereof, now on file in the office of the Clerk of the Surrogate's Court of the County of (*New York*) and the certification thereof by the Clerk of said Court is hereby waived.

Dated, (*New York, September 1, 1916.*)

(BOWNE & DOWNE,)

Attorneys for Petitioner.

(ROUND & BOWNE,)

Attorneys for (*E. H. Ames,*) Respondent.

Stipulation Waiving Certification

(Where No Case Made)

Pursuant to § 3301 of the Code of Civil Procedure, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, the decree appealed from and all the papers and proceedings upon which the Surrogate acted in making said decree, and the whole thereof, now on file in the office of the Clerk of the Surrogate's Court of the County of (*New York*) and certification thereof by the Clerk of said Court is hereby waived.

Dated, (*New York, September 1, 1916.*)

(BOWNE & DOWNE,)

Attorneys for Petitioner.

(ROUND & BOUND,)

Attorneys for (*E. H. Ames,*) Respondent.

* And any other papers printed and upon which the decree was entered.

Filing Record in Appellate Division

Order Filing Record in Appellate Division

Pursuant to § 1353 of the Code of Civil Procedure, and to the stipulation of the parties, it is hereby

ORDERED that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court in the (*First*) Judicial Department.

Dated, (*New York, September 1, 1916.*)

(*ROBERT L. FOWLER,*)

Surrogate.

[As to the use of italics in case, see 12 *N. Y. Supp.* 870.]

47. Send papers to printer.

Keep in mind the last day to serve and file the printed appeal book.

48. Receive proof of appeal book.

49. Submit same to opposing counsel for correction.

50. Receive proof with objections.

51. Agree upon changes.

52. When changes agreed upon, have case printed.

Thirty copies are usually ordered (unless intention is to appeal to Court of Appeals, when 60 copies are ordered,) unless there are three or more attorneys to be served when 70 or more copies may be needed.

Blanks are usually left in three copies for signatures to stipulations and orders in case, and the names printed in the remaining copies.

53. Receive printed case on appeal from printer.

54. Have stipulations signed in three printed copies of case on appeal. It is very unusual for attorneys to require certification of the case, and where a refusal to assent to the usual stipulations is met after the case is printed, certain changes in the printed case become necessary. The clerk's certificate must be added, and the orders settling the case and ordering it on file must be changed as follows: Instead of "on the annexed stipulation, etc.," must be inserted "upon the annexed certificate of the clerk of this court that the foregoing is a true copy of the decree and all other papers on file herein, etc."

55. Have the orders settling case and ordering it on file in the three copies with blanks signed by the surrogate.

Filing Record in Appellate Division

56. File one signed copy of the printed case with the clerk of the Surrogate's Court.
57. Within twenty days after settlement (except in Fourth Dept.) serve three copies of printed case on attorney for respondent, and file one signed copy of printed case, with proof of due and timely service of three copies on adversary, with Clerk of the Appellate Division. (Rule 41, G. R. P., and see Rule 6, First Dept. Rules; in Second Dept., see also *Enum. Cal. Rule*, Second Dept. Rules.)
58. If it is desired to bring to the attention of the Appellate Division a fact happening subsequent to the taking of the appeal, the proper practice is to submit an affidavit setting forth that fact, as the record cannot be corrected by the insertion of such fact. (See 159 *App. Div.* 311.)

63 and 64 of Appeals from Judgments I, page 76, may now be followed.

HINTS ON APPEAL PROCEDURE

VII

FROM JUDGMENTS

City Court of the City of New York to Supreme Court, Appellate Term

From judgment entered on verdict of a jury and order denying motion for a new trial.

1. As soon as the verdict has been rendered, the next duty of the defeated counsel is to move to set aside the verdict and for a new trial, and he must make up his mind whether he will make the motion then and there or wait until some future time to make it. He has, under § 999 of the Code, the rest of the term in which to move. If made as a formal motion for securing the right to have facts reviewed at the Appellate Term, it is best to make it then and there, but if the attorney feels that there is any hope of having a new trial on the ground that the verdict is excessive or insufficient in damages or otherwise contrary to the evidence, it is better to obtain leave to submit briefs and make motion at later day in same term.
2. When verdict rendered, move to set aside verdict and for new trial upon all appropriate grounds stated in § 999 of the Code, and upon any special grounds that exist.
Must be made at same time; and before the same judge.
(§ 999, Code; see Rule 31, G. R. P.)
The court usually denies this motion, in which event —
3. Move for stay of execution and additional time to make a case.
The court usually grants this motion, and gives 20 to 30 days' stay of execution and from 30 to 60 days in which to make a case. (§ 1351, Code.)
4. Order copy of stenographer's minutes of trial.
5. Get exhibits.
6. Get extracts from clerk's minutes. (§ 1237, Code.)

If decision is reserved on motion for new trial, the exhibits and extracts from minutes cannot be obtained until the trial judge decides the motion.

Taking Appeal

7. Enter in diary when stay expires.

The stay begins to run from date of entry of judgment.

8. Receive copy of judgment with notice of entry.

9. Enter in diary last day to appeal.

Ten days after service of a copy of the judgment, with notice of entry. (§ 3190, Code.)

10. Enter in diary last day to serve proposed case and also last day to serve notice of application for extension to serve case, which is *two* days before last day to serve case.

Thirty days after service of copy of judgment with notice of entry unless further time granted by court. (Rule 32, G. R. P.)

11. Receive order denying motion for new trial with notice of entry.

12. Enter in diary when time to appeal therefrom expires.

Ten days from service of a copy with notice of entry. (§ 3190, Code.)

The usual practice is to serve a copy of the order denying motion for new trial with the copy of the judgment. However, this is not always done.

13. If copy of order denying motion for new trial is not served by adversary, draw and enter same if you wish to review the questions of fact in the case. (See Form, p. 689, *et seq.*)

14. Serve copy with notice of entry on adversary.

15. Draw notice of appeal. (See Form, p. 712, *et seq.* §§ 1300-1301, and 1355, Code.)

Notice of appeal cannot be amended after time to appeal has expired where the effect of the amendment will be to extend the time to appeal.

16. File notice of appeal with clerk of City Court. (§ 1300, Code.)

The undertaking and notice of appeal are usually filed together.

17. Draw undertaking on appeal, or make arrangements for surety company bond.

An undertaking is not necessary to perfect the appeal, but except where it is especially provided by law it is necessary to stay execution. (See Form, p. 723, §§ 810, 811, 812, 813, 819, Code; Rule 5, G. R. P.)

Security may be waived. (§ 1305, Code.)

 Staying Execution

Deposit in lieu of undertaking. (§ 1306, Code.)

As to dispensing with, see § 1312, Code; see also §§ 1326, 1327, 1334, 1335, 1351, and 1352, Code.

In action to recover chattel, draw affidavit and order fixing amount of bond.

Need not be approved. (§ 1335, Code.) (See note under 17, Appeals from Judgments I, page 57, *supra*.)

18. Before stay expires and before time to appeal expires, file undertaking with clerk of city court. (§§ 3192, 1307-1334, Code; Rule 4, G. R. P.)

The undertaking and notice of appeal are usually filed together.

19. Serve notice of appeal and copy of undertaking with notice of filing. (§§ 1300, 1302, 1326, 1334, 796 and 797, Code.)

20. Enter in diary last day for respondent to serve notice of exception to sureties.

Ten days after service of undertaking with notice of filing.
(§ 1335, Code.)

21. Wait for notice of exception to sufficiency of sureties.

22. Receive notice of exception to sufficiency of sureties.

23. Enter in diary last day for sureties to justify.

Within ten days after service of notice of exception.
(§ 1335, Code.)

24. Enter in diary last day to serve notice of justification.

At least 5 days' notice of justification must be given.
(§ 1335, Code.)

25. Draw and serve notice of justification of sureties. (See Form, p. 726.)

Five days' notice must be given, and date of justification must be within 10 days after service of notice of exception.

26. Enter in diary to notify sureties to justify and date of justification.

27. Notify sureties when and where to justify.

28. Attend on justification.

29. Have sureties justify, and undertaking approved and endorsed by judge:

"I hereby find the sureties on the within undertaking sufficient and hereby allow them and each of them."

(Date)

(Signature)

30. Serve notice of approval of sureties. (§ 1335, Code.) (See Form, p. 727.)
31. If extension of time to make and serve case needed or if extension by stipulation has been had and further time is needed, ask adversary to stipulate for same *three* days before time to serve case expires.
This is very important as the court rules provide that “no order extending the time to serve a case or the time within which the amendments thereto may be served, shall be made, unless the party applying for such order serve a notice of *two* days upon the adverse parties of his intention to apply therefor, stating the time and place of making such application.” (See Rules 32 and 33, G. R. P.)
32. If extension by stipulation refused, apply to court at Special Term for same on *two* days’ notice. (Rule 32, G. R. P.; §§ 781, 783, Code. See 25 *How. Pr.* 438.)
33. Obtain order extending time to serve same with notice of entry.
34. Get opinion or memorandum of judge, if one filed, or make affidavit that none was given, or if given that copy cannot be procured. Receive stenographer’s minutes of trial. (Rule 41, G. R. P.)
35. Prepare proposed case before time to do so expires. (See No. 35 under Appeals from Judgments, I, Supreme Court, page 59, *supra*.)
Thirty days after service of judgment with notice of entry. (Rule 32, G. R. P.)
36. Serve proposed case on respondent before time to do so expires.
Thirty days after service of judgment with notice of entry. (Rule 32, G. R. P.)
37. Enter in diary last day to receive amendments.
(Rule 32, G. R. P.)
38. Receive proposed amendments. (See form under No. 38, of Appeals from Judgments, Supreme Court, I, page 65, *supra*.)
Bear in mind that if respondent applies to you on last day to serve proposed amendments for an extension of time therefor it is too late for him to obtain such extension from the court if you deny same, as two days’ notice is required. (See Rules 32 and 33, G. R. P.)

Settlement of Case

39. Enter in diary last day to serve notice of settlement.
Within 4 days after service of proposed amendments.
(Rule 32, G. R. P.)
40. If proposed amendments are served, mark them "allowed" or "disallowed."
41. Draw notice of settlement of case and exceptions before the judge who tried the action and serve within *four* days from service of proposed amendments. The date of settlement stated therein must be *not less than four nor more than ten days after service of notice.* (Rule 32, G. R. P.; § 997, Code. See Form on p. 67, *supra*.)
42. Enter in diary date of settlement.
43. Prepare memorandum for court on settlement and see that amendments contain references to pages of stenographer's minutes. (Rule 32, G. R. P.)
44. Settlement. (Rules 32 and 34, G. R. P.; § 997, Code.)
Submit to judge on settlement:
1. Proposed case.
 2. Proposed amendments.
 3. Stenographer's minutes of trial.
 4. Exhibits or models.
 5. Memorandum as to settlement.
- The settlement itself is usually informal.
Affidavits may be presented. The judge's recollection, assisted by the stenographer's minutes, controls.
But if there is a dispute, see 34 *Hun*, 547; 112 *N. Y.* 592; 40 *App. Div.* 86.
After appeal completed it is too late to move for resettlement.
On *resettlement*, see 112 *N. Y.* 592; 119 *N. Y.* 633; 34 *Hun*, 547; 7 *N. Y. Supp.* 321; 7 *N. Y. Supp.* 69.
45. See that judge signs order settling the case and ordering it on file. (§ 1353, Code.)
This order is usually endorsed by the judge on the original proposed case submitted to him.
46. Enter in diary last day to file with clerk of Appellate Term the printed return and affidavit of service of three copies and note of issue.
Twenty days from date of settlement. (Rule III, Appellate Term Rules, First Dept.)

47. Enter in diary last day to serve notice of argument.
Eight days before commencement of term for which cause is noticed. (Rule II, Appellate Term Rules.)
48. Prepare papers for printed case.
(See § 796, Code; Rules III and V, Appellate Term Rules; Rule 43, G. R. P.; and see No. 49, Appeals from Judgments, I, Supreme Court, p. 69, *supra*.)
49. Receive proof of appeal book.
50. Submit same to opposing counsel for correction.
51. Receive proof with objections.
52. Agree upon changes.
53. When changes agreed upon have case printed. Thirty copies are usually ordered. Blanks are usually left in three copies of the case for (1) signatures to stipulations and orders; (2) affidavit of no opinion by appellant's attorney or his clerk, and (3) notary's name. The names are printed in the remaining copies.
54. Receive printed case on appeal from printer.
55. Have stipulations settling case, waiving certifications, and consenting to filing of printed copy with clerk of City Court in three copies signed by attorney for respondent. (Rule 41, G. R. P.; § 3194-A, Code.)
56. If respondent declines to sign stipulation, have printed case certified by clerk or obtain extension of time to file case by order from the court. (§ 3194-A, Code.)
It is very unusual for attorneys to require certification of the case, and where such a refusal to assent to the usual stipulations is met after the case is printed, certain changes in the printed case becomes necessary. The clerk's certificate must be added, and the orders settling the case and ordering it on file must be changed as follows: instead of "on the annexed stipulation, etc.," must be inserted "upon the annexed certificate of the clerk of this court that the foregoing is a true copy of the case and exceptions, the judgment roll and all other papers on file herein."
57. Have the orders settling case and ordering it on file signed by trial judge in the three copies containing blanks. (§ 1353, Code.)
58. File one signed copy of the printed case with clerk of City Court and direct him to make return.

Points—Notice of Argument

59. Before time expires, serve three copies of the printed return (printed case on appeal) on attorney for respondent and get admission of service or make affidavit of service.
Within twenty days after settlement and at least ten days before the first day of the next term of the Appellate Term at which the appeal can be heard. (Rule II and III, Appellate Term Rules.)
60. Before time expires, file with clerk of the Appellate Term ten copies of the printed return with proof by admission or affidavit of service on the respondent of three copies.
At least ten days before the first day of the next term of the Appellate Term at which appeal can be heard. (Rule II, Appellate Term Rules.)
61. Have points printed. (See Rules 40 and 43, G. R. P.)
The calendar number of the appeal as printed in the *New York Law Journal* must appear on the points. (Rule V, Appellate Term Rules.)
62. Enter in diary:
Last day to prepare and serve notice of argument.
Eight days before first day of term. (Rule II, Appellate Term Rules.)
63. Prepare and serve notice of argument.
64. Enter in diary:
1. Last day to file with clerk of Appellate Term.
Notice of argument with proof of service.
On or before the Monday preceding the first day of the term. (Rule V, Appellate Term Rules.)
2. Last day to serve three copies of points on respondent and file proof of service thereof, and file ten copies of the points with the clerk of the Appellate Term.
On or before the Monday preceding the first day of the term. (Rule V, Appellate Term Rules.)
65. Serve three copies of points. These are usually served with notice of argument.
66. Receive respondent's points.
Not later than noon of the Saturday preceding the first day of the term. (Rule V, Appellate Term Rules.)
67. Argument.
There is nothing for counsel to do on the day of argument but to answer the case on the call of the calendar and submit the case when called or argue it when reached.

Argument

Not more than one counsel shall be heard on each side unless court otherwise orders and not more than thirty minutes will be allowed for argument to each side except by special permission, which is seldom granted. The number of counsel engaged does not extend time. (Rule 47, G. R. P.; Rule V, Appellate Term Rules.)

No brief or memorandum will be received after argument, except by special permission, which is rarely granted. (Rule V, Appellate Term.)

Counsel for the appellant argues first. Then counsel for respondent and the court usually permits a few minutes to appellant to close.

HINTS ON APPEAL PROCEDURE

VIII

FROM JUDGMENTS

City Court of the City of New York, Trial Term, to Supreme Court, Appellate Term

From Judgment Entered on Decision of Judge.

Most frequently such a decision arises from a stipulation by both parties waiving a jury and consenting to a trial of the issues by the judge.

1. If any memorandum or opinion given by judge, secure copy of same.
2. Order copy of stenographer's minutes.
3. Get exhibits.

It is the almost universal practice in the City Court to-day, notwithstanding the provisions of § 3173, Code, to provide in the opinion published in the Law Journal that findings of fact and conclusions of law be submitted by the parties on notice, usually one day. The practice is coincident with that prevailing in the Supreme Court after trial before a judge alone.

The opinion also usually indicates that the defeated party may have additional time to make a case and grants a stay of execution.

4. Submit proposed findings of fact and conclusions of law, if directed so to do by the opinion published in the Law Journal.

If the opinion does not direct the submission of findings, and simply directs judgment to be entered thereon, it is sufficient under § 3173.

§ 3173 provides: That the decision of the court in a case specified in § 1022, (which is this case), is *sufficient* if it directs the judgment to be entered thereupon; but, if so required by a party appealing, the justice by whom the decision was made must within ten days after the appeal is perfected and notice thereof

 Notice of Exceptions — Taking Appeal

and of the requirement is given to him, make and file with the clerk a special decision stating separately the facts found and the conclusions of law.

If you desire to have the findings of fact and conclusions of law separately stated, the practice outlined in the foregoing section must be followed. Therefore, submit proposed findings of fact and conclusions of law with proof that appeal is perfected and notice requiring the justice to file the special decision.

5. If usual stay of execution and additional time to make a case not granted in opinion or memorandum given by judge, apply for same on settlement of judgment or move, on notice, for same before judge who tried case.
6. See that judgment contains stay of execution and additional time to make and serve a case, or if obtained on motion, draw and enter order granting stay and additional time to make case. Serve same with notice of entry on adversary.
7. Receive copy of decision and notice of entry of judgment.
8. When decision signed and copy thereof served with notice of entry, together with a copy of the judgment entered thereon with notice of entry, enter in diary:
 1. Last day to serve and file notice of exceptions.
Ten days after service of judgment with notice of entry. (§ 994, Code, and § 1351, Code.)
 2. Last day to appeal.
Ten days after service of judgment with notice of entry. (§ 3190, Code.)
 3. Last day to serve proposed case.
Thirty days after service of copy of decision and notice of entry (Rule 32, G. R. P.) unless longer time granted.
 4. When stay expires.
 5. Last day to serve notice of application for extension to serve case, which is two days before last day to serve case. (Rule 32, last par., G. R. P.)
9. Draw notice of appeal. See form, p. 712, *et seq.*
 Notice of appeal cannot be amended after time to appeal has expired, where the effect of the amendment is to extend the time to appeal.

Case on Appeal

10. File notice of appeal with the clerk of City oCourt. (§ 1300, Code.)

The undertaking and notice of appeal are usually filed together.

11. Prepare notice of exceptions to decision and findings.

This notice must state specifically what portion of the decision *e. g.* which findings of facts and conclusions of law are excepted to, and which refusals to find as requested are excepted to; (see Forms, p. 708, *et seq.*, and Appeals from Judgments, II, Supreme Court, p. 83, *supra*.)

- Nos. 17 to 67 of Appeals from Judgments of Supreme Court (p. 57) may now be followed, but in making up the case on appeal the following papers constitute the case (see § 997):

Statement under Rule 41 as to order, see 105 *App. Div.* 476.

Notice of Appeal.

Pleadings and all papers on file with the judgment roll, viz:

Summons.

Complaint.

Answer.

Demurrer or

Reply.

Order of reference (if any).

Report of referee (if any.)

Decision.

Judgment.

Notice of exceptions,

And any other papers used.

Case:

Evidence.

Exhibits.

If questions of fact are to be raised, the case must also contain a *statement that it contains all the evidence taken upon the trial of the action.*

Stipulation settling case.

Order settling case.

Printed Case on Appeal

Stipulation waiving certification,

or

The certificate of the clerk of the court.

Opinion of the court or affidavit of no opinion.

Order filing record in Appellate Term.

This order is only necessary in appeals
heard on case and exceptions. (§ 997,
Code.)

HINTS ON APPEAL PROCEDURE

IX

FROM ORDERS

City Court of the City of New York, Special Term, to Supreme Court, Appellate Term

1. Receive copy of order with notice of entry.

If all the papers used before the court are not recited in the order, move for a resettlement.

See that order shows upon its face that it was not granted upon appellant's application. *Raymond v. Tiffany*, 115 *App. Div.* 352.

If order is resettled, the appeal is taken from the order as resettled; but the appeal from the resettled order may be lost unless an appeal from the first order is taken in time. See *Beach v. Beach*, 160 *App. Div.* 229; *Dewsnap v. Matthews*, 119 *App. Div.* 167; *Wollowitz v. N. Y. City Railway Co.*, 116 *App. Div.* 361.

2. Consult §§ 3189, 1347, 1348, 1349, Code as to whether appeal lies.

3. Enter in diary:

1. Last day to appeal.

10 days after service of a copy of the order with notice of entry. (§ 3190, Code.)

But service of copy of order with notice of entry by loser upon winner does not limit the former's time to appeal. (*Rohr v. Lynch*, 78 *Misc.* 45.)

2. Last day to serve and file printed papers with clerk.

15 days after service of notice of appeal.
(Rule III, Appellate Term Rules, First Dept.)

4. Draw notice of appeal. (See Forms, p. 712, *et seq.*, and §§ 1300-1301, Code.)

5. Serve notice of appeal.

6. File notice of appeal with clerk of City Court of City of New York.

Printed Papers — Points

7. Prepare papers on appeal. (See notes under 8 of Appeals from Orders, p. 101, *supra*.)
8. Send papers on appeal to printer and receive proof.
9. Submit proof to attorney for respondent for corrections.
10. Receive proof with adversary's corrections.
11. Have papers on appeal printed. (See Rule 43, G. R. P.)
12. Submit three copies of printed papers to attorney for respondent, and have stipulation waiving certification signed.
13. If respondent's attorney refuses to so stipulate have papers certified by the clerk.
14. Before time expires, serve three copies of printed return (printed papers on appeal) on attorney for respondent and get admission or make affidavit of service.
Printed return must be filed within 15 days after service of notice of appeal. (Rule III, *supra*.)
15. File one signed copy of the printed papers with clerk of City Court and direct him to make return.
16. See that return is filed with the clerk of the Appellate Term by the clerk of the City Court within 15 days after notice of appeal. In order to place the cause on the Appellate Term calendar, the return must be filed at least *ten* days before the first day of the term for which the case is to be noticed.
17. Enter in diary:
Last day to file affidavit of service of three copies of printed papers on appeal.
Ten days before first day of term for which appeal is to be noticed. (Rule II, Appellate Term Rules).
Last day to serve and file notice of argument.
Eight days before first day of term.
Last day to serve and file appellant's points. On or before Monday preceding first day of term. (Rule V, Appellate Term Rules.)
18. Prepare notice of argument.
19. At least ten days before first day of term file with clerk of the Appellate Term admission or affidavit of service of three copies of printed papers on appeal and ten copies of printed papers. (Rule II, Appellate Term Rules.)
20. At least eight days before first day of term, serve notice of argument and obtain admission of service.

Printed Papers — Points

21. Within same time file with clerk of Appellate Term notice of argument with proof of service by affidavit or admission. (Rule V, Appellate Term Rules.)
22. Prepare and print points. (See Rules 40 and 43, G. R. P.) Must have calendar number on first page. (Rule V, Appellate Term Rules.) It is customary to print name of counsel who is to argue case on front page of points.
23. On or before Monday preceding first day of term serve a copy of appellant's points on respondent; and file with clerk of Appellate Term 10 copies of printed papers on appeal and 10 copies of points with proof of timely service of one copy. (Rules II and V, Appellate Term Rules.)
24. Not later than 12 o'clock noon on the Saturday preceding first day of term, receive a copy of respondent's points. (Rule V, Appellate Term Rules.)

PART III
LETTERS TO CLIENTS
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PART III

LETTERS TO CLIENTS

The following, although put in the form of letters, are intended to be used mainly as hints for attorneys. They may, however, with omissions and changes, be used as a basis for such letters.

I

LETTER TO NEW CORPORATION

.....
To.....

GENTLEMEN: — Now that your firm has been turned into a corporation by certificate of incorporation filed in the office of the Secretary of the State of New York at Albany on the..... day of....., 19 , and in the office of the clerk of the County of (*New York*,) on the.....day of....., 19 , we desire to call to your attention a few of the matters you might otherwise overlook.

This is a general letter and the instructions and suggestions must be viewed subject to the circumstances of your company.

Money in bank should be transferred by check to the corporation.

It is wise to notify debtors in large amounts that moneys due the firm have been assigned to the corporation, and that payment should be made to it.

To relieve the firm partners of future liability, actual personal notice of the dissolution should be brought home to every person with whom the old firm has dealt, and as to those with whom the firm has not dealt, notice should be given of the dissolution by advertising in the newspapers. (Commercial expediency sometimes makes this unwise.)

It is customary to send out a letter in the following form. (See Form I, hereto annexed.)

You should see that the patents, copyrights and trademarks belonging to the old firm are duly assigned by instruments such as are required to be made, filed, or recorded in various public offices.

To New Corporation

Assignment of United States patents must be recorded within three months after execution, and in other countries filed or recorded in prescribed time.

If you hold stocks or bonds standing in the name of the old firm they should be transferred on the books of the respective companies to the name of the new corporation.

The lease of the premises occupied by the corporation, if assigned to it, should have an endorsement of consent of lessors placed thereupon.

Assignments of mortgages should have been taken by separate instruments properly acknowledged, so that same may be properly recorded.

Deeds of real estate should have been taken by separate instruments, properly acknowledged, so that they may be properly recorded.

Policies of fire, casualty, or employer's liability and all other insurance in the name of the old firm should be assigned to the corporation and the consent of the insuring companies to such transfer should be endorsed on the policies.

Where the firm has important contracts, particularly contracts with State or municipal corporations, the consent of the other contracting parties should have been secured before incorporation, and after incorporation their consent to the assignment of the contract should be obtained and filed, where necessary, so that in case of breach of contract, proper action could be maintained by the corporation.

The old books of account should be closed and new books of the corporation should be opened at once.

Be very careful in signing any documents on behalf of the corporation to see that the name of the corporation appears as the signer and as a party to all instruments, and then add "By as its president, and by as its secretary" (or treasurer, as the case may be).

You will constantly need a corporate acknowledgment and a form is hereto annexed, and marked "Form 2."

Whenever an important contract is made by your company, a copy of the authorization thereof by resolution of the board of directors should be annexed and a form for that purpose is hereto annexed, marked "Form III."

To New Corporation

If there is any State in which you are to do much business, you should ascertain whether, under the laws of that State any requirement exists for the filing or recording of any papers in that State, and what the effect is, in case you fail to file such papers.

In most of the States you are prohibited from suing therein if you are doing business in that State without filing a certificate, but if you are engaged in interstate commerce, perhaps to such extent this requirement, if it exists, would not apply.

Your company should keep copies of all tax or other reports or certificates rendered or made to any public officer, either with the minutes or spread at length thereupon.

In preparing to hold any meeting the minutes of the previous meeting should be examined, so that the minutes of the contemplated meeting will show compliance with any directions of the previous meetings.

Should any resolution be passed which is intended to be of a permanent character it should not be passed in the form of a motion or resolution, but should be by an amendment or addition to the by-laws; and if any amendments or additions are made to the by-laws you should see that they are at once entered in the by-laws themselves; that is, in the copy used by the company, so that they may be relied upon at all times as fully revised.

When persons holding stock in your company as executors, administrators, guardians, trustees, or in any other representative or fiduciary capacity, desire to vote at your meetings it is customary to ask for proof of their right so to do, and such proof should be filed with the secretary of the company.

Your company should not buy or become the holder of any of its own stock under any circumstances, without first consulting counsel.

Neither a stockholder nor director can vote by telephone, telegraph or mail.

If your company holds stock in any other company and desires to vote upon it, see that one of your officers is given a proxy authorized by resolution of your board of directors.

Remember that when one-half of your capital stock is paid in, which must be done within one year from the date of the incorporation of the company, a certificate must be made of such fact and filed within thirty days thereafter.

To New Corporation

Remember that you cannot divide, withdraw by dividend, or in any way pay to the stockholders, or any of them, any part of the *capital* of your corporation, or reduce your capital stock without proceedings at law, nor can you loan moneys to any stockholder therein, and it is also provided by law that you shall not as a company, or any officer thereof, discount any note of any stockholder to enable any stockholder to withdraw any of the money paid in by him on his stock.

Consult the corporate calendar which is hereto annexed once each month.

You cannot issue your stock or bonds except for money, labor done for the company after incorporation, or property actually received for the use and lawful purposes of your corporation. No stock can be issued for less than its par value.

You can have no subscription to your stock made conditionally.

It is also very important to know that if your corporation should refuse to pay any of its obligations when due, you cannot in any way make a transfer of your property or safely do any act thereafter without first consulting counsel.

It is always unwise to make any tax reports or other reports to the authorities without consulting counsel.

You should notify safe deposit companies and have name of the vault changed to that of the corporation.

You should, in all cases, where you desire the company to be unquestionably bound, affix the seal of the corporation to its documents, although a seal is not always necessary.

Your company should take actual and tangible possession of all assets and property transferred to it immediately after your right to do so exists.

In case you own real property it may be wise to cause a certified copy of your certificate of incorporation to be recorded in the office of the county clerk of the county in which the same is situated.

The corporation should be very careful to make a full and complete inventory of all the property and assets with which it commences business, or which is paid into the company's treasury upon each issue of stock in the first instance.

You should have at least one or two certified copies of your certificate of incorporation always on hand.

New letter books should be started for the corporation.

 Proposal to New Corporation

Prepare statement for newspapers as to matter you desire published in reference to the new corporation.

Remember that in most foreign States in which you do business, if you have property situated therein, the same is subject to attachment on the sole ground that you are a foreign corporation. Comply at once with § 275(a) of the Tax Law.

See that your new cable name and address is given to the cable companies.

Provide yourself with extra copies of the by-laws, signed by the secretary, stating "The above is an exact and correct copy of the by-laws copied from the records of the corporation and revised up to date.

.....Secretary."

Many public officers will require copies to be filed as a condition precedent to their doing official acts.

Remember that upon the dissolution of the old concern all contracts with employees terminate and sometimes it is wise to have that fact clearly understood between the corporation and the employees to be retained and a new contract made between the corporation and such employees, and releasing the members of the firm on the old contract.

Consult counsel as to regulations of factory, labor and other laws which may affect your industry, and as to reports required by State laws and returns under the Federal Income Tax Law.

FORM I

(Date)

To

GENTLEMEN:— We desire to inform you that the firm composed of and doing business in the city of New York at..... has been dissolved by mutual agreement, and that the property and assets formerly belonging to the old firm have been transferred to the Company, a corporation incorporated under the laws of the State of New York, formed to carry on the business formerly carried on by the said firm, and

 Corporate Acknowledgment

that said corporation has assumed the indebtedness of the old firm.*

We hope that the new company may enjoy the pleasant business relations that existed in the past with the old firm, and we believe that with increased facilities, the business entrusted to our care will receive prompt and careful attention.

Yours truly,

(Signed by members of the old firm and the corporation.)

FORM II

NEW YORK REAL PROPERTY LAW, SEC. 309

The acknowledgment of a conveyance or other instrument by a corporation must be made by some officer thereof, authorized to execute the same by the board of directors of said corporation. The certificate of acknowledgment must be in substantially the following form, the blanks being properly filled:

"State of New York,

County of ss.:

On the day of
, in the year
 before me personally came
 to me known, who, being by me duly sworn, did depose and say
 that he resided in that he is the
 of the Company, the corporation described
 in and which executed the above instrument; that he knew the
 seal of said corporation; that the seal affixed to said instrument
 was such corporate seal; that it was so affixed by order of the
 board of directors of said corporation, and that he signed his
 name thereto by like order."

(Signature and office of officer taking acknowledgment.)

If such corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

* Insert statement that one or more members of the old firm will continue to take an active interest in or direction over the new company and that the business will be conducted on the old lines.

Resolution — Certificate of Secretary

FORM III

At a meeting of the board of directors of the
 Company, a corporation duly incorporated
 and organized under and by virtue of the laws of the State of
 New York, and having its principal office and place of business
 located in the Borough of Manhattan, City, County and State of
 New York, duly convened at the office of said company in New
 York city, pursuant to the by-laws of said company, held on the
 day of the following resolution
 was duly moved, seconded and adopted and ordered to be entered
 upon the minutes of the proceedings of said meeting by the secre-
 tary thereof.

FORM IV

RESOLVED, (take in resolution.)

The undersigned, the secretary of the company above named,
 has compared the foregoing resolution with the original thereof
 as recorded in the minute book of said company, which is in his
 custody, and hereby certifies the same to be a correct and true
 transcript therefrom and the whole of said original resolution.

WITNESS the seal of this company, attested by me.

Dated

Attest:

.....Secretary.

(Corporate seal.)

FORM V

KARR & SMALL.—The business heretofore carried on at
 No. 356 Broadway, New York City, by the undersigned, Warren
 S. Karr and William D. Small, as partners under the firm name
 of Karr & Small, has been this day transferred to a corporation
 organized under the laws of the State of New York, with a capital
 stock of \$20,000, by the name of "Karr & Small, Inc.," which
 will continue said business at the above address, the firm of Karr
 & Small having been this day dissolved by mutual consent.

New York, January 14, 1916.

WARREN S. KARR,
 WILLIAM D. SMALL,
 KARR & SMALL, INC.

II

LETTER TO SPECIAL PARTNER IN LIMITED PARTNERSHIP

(New York, June 21, 1916.)

Dear Sir:

A certificate of limited partnership has been duly filed and the required affidavit that you have actually and in good faith paid in cash (five hundred thousand) dollars, has been filed and the publication required by law has been made, but there are a few points, concerning which I should like to advise you, otherwise your liability which is now restricted to the fund contributed by you may result in your liability as a general partner for all the debts of the partnership.

Your name must not be used as a part of the firm name, because if so used with your privity you will become liable as a general partner.

The general partners only may transact the business of the partnership and they are liable to account to you for their management of the business.

You are not permitted to sign for the partnership nor bind the same nor transact any business on account of the partnership, nor be employed for that purpose as agent, attorney or otherwise. You may from time to time examine into the state and progress of the partnership business and advise as to its management.

You are not bound to give this advice nor are they bound to take it.

You may loan money to and advance and pay money for the partnership; you may take and hold notes, drafts, acceptances and bonds of or belonging to the partnership as security for the payment of such money and interest.

You may use and lend your name as security for the partnership in any business thereof and you have the same rights and remedies in these respects as other creditors might have.

You may lease to the general partnership any real or other property for the purpose of the partnership at such rents and in such terms as may be agreed upon.

You may negotiate sales, purchases and other business, but cannot carry such negotiations to the point of binding the firm,

Special Partner — Limited Partnership

which can be done only by a general partner possessing the power of general agency for the firm.

Such business negotiated by you is not binding on the partnership until approved by a general partner.

If you interfere contrary to these instructions, you will be deemed and be liable as a general partner.

If the partnership becomes insolvent or bankrupt, you will not, except for claims contracted as above set forth, be allowed to claim as creditor until the claims of all the other creditors of the partnership are satisfied.

In all other respects the law puts you in a position of a stranger to the firm. In short, you may not in your right as a partner or even by direct authority of your copartners, become agent of the firm for any purpose.

You may sell your interest in the partnership without working a dissolution thereof or rendering the partnership general, provided you take the proper legal steps, and thereupon the purchaser becomes a special partner with the same right as you possess.

In other words, so far as concerns your relation to the general partners, you are treated as a mere contributor of capital, with none of the rights or liabilities belonging to general partners, such as universal agency, unlimited liability for debts and a property interest in the firm name and good will.

The element of mutual trust and confidence which is given in relation between general partners is wholly and conspicuously lacking.

You might even become a special partner in a competing firm, provided there was no actual fraud or deceit. But in such a case it would be only due caution to indicate to the general partners that you propose to become a special partner in that competing firm.

Lastly, you should be very careful not to continue the partnership beyond the date set forth in the original certificate without complying strictly with the law as to continuance and renewal of limited partnerships.

Yours truly,

.....

III

LETTER OF INSTRUCTION TO GENERAL GUARDIAN OF INFANT

Dear Sir:

We desire to advise you that letters of guardianship, dated the day of, 19.., have been issued to you upon the estate of, an infant *under* the age of fourteen years.

These letters were issued by the Hon. one of the Surrogates of the County of upon the petition filed by you on the day of, 19.., and as you now actually enter upon your duties as Guardian, we desire to inform you in a general way as to your duties and responsibilities and to make some suggestions that may be useful to you in your representative capacity:

You should

1. Make and file with the Surrogate an accurate inventory of the infant's property. It is wise to have the property appraised.
2. Open a separate account in your name as General Guardian with some bank or trust company which is a legal depository for trust funds, and deposit therein all trust funds as soon as received, until invested, to credit of yourself as guardian, at agreed rate of interest, if possible.
3. If the funds of the ward are not invested, invest them in legal investments * as soon as it can reasonably be done, and so far as possible keep the same and the income thereof invested till your ward becomes 21 years of age, or until by reason of his death or other cause, you are sooner called upon to account and pay over the funds to others. You may invest the trust funds in the same kind of securities as those in which savings banks of this State are by law authorized to invest the money deposited therein. (See § 239 of the *Banking Law, Cons. Laws; Laws 1914, ch. 369; Cons. Laws, ch. 2, as amended by Laws 1915, ch. 515 and 269, and Laws 1916, ch. 363, in effect May 1, 1916.*
4. Procure a book and devote it exclusively to matters pertaining to the guardianship, and in it set down at the time

* See 27, p. 163.

Instruction to General Guardian

of its occurrence every item of income and expenditure on behalf of the ward intended to be a credit or a charge against yourself.

5. Take receipts for all expenditures, except for trifling sums, in duplicate, and preserve them until the final accounting.
6. Make no expenditure out of principal or income of the ward for his support and education, without an order of the court for that purpose pursuant to Section 2664 of the Code.

Make no disbursements for your ward out of either principal or income except for his reasonable maintenance and education in accordance with his station in life and circumstances, having regard for any money the ward himself may earn. If your ward marries you should consult counsel before continuing disbursements for maintenance. It is always safest to secure from the Surrogate an order fixing an annual allowance to be expended upon the maintenance and education of the ward. If the General Guardian is also the parent of the ward he should not use the funds of his ward except so far as his own means are inadequate for proper support, maintenance and education and then only to the extent allowed by an order of the Surrogate.

7. Keep constantly a list of the articles of property in your custody as guardian.
8. Keep a record of the disposing of any piece of property and how disposed of, to whom and for what purpose and at what price.
9. Under no circumstances use funds of award for your own use.

Mingling the funds of the estate with your own, is a ground for your removal, § 2574, Code, and since September 1, 1916, is a misdemeanor, § 2664-a, Code. You should not loan the money of your ward upon personal security, for if you do so, and the maker of such securities subsequently becomes insolvent, you may be compelled to make good the loss to the estate, and in addition may be compelled to bear the expense of litigation made necessary to collect the funds thus improperly invested. The courts have generally held that trustees must invest in loans on unencumbered real estate situated in this State, in the

Instruction to General Guardian

bonds of the State, or the United States, and that neither good faith, care, nor diligence will protect them in the event of loss, where this rule is departed from. Mortgage loans may be made on unencumbered real property in this State worth 50 per cent more than the amount of the loan. (§ 111 *Decedent Estate Law*.) If satisfactory securities cannot be obtained after reasonable efforts to do so, the money should be deposited in some trust company, depository for trust funds, or savings bank, where it will draw interest until securities can be obtained.

10. At least once each year (usually in January) you are required to file in the Surrogate's Court an annual inventory and account of the property of the infant in your hands and receipts and disbursements relating thereto.
11. You may lease for not more than five years, but not mortgage or sell any real property in which your ward has an interest without leave of court. If such real property become unproductive or dilapidated, consult counsel as to means to relieve yourself from liability.

IV

LETTER TO EXECUTORS

Dear Sirs:

We desire to advise you that letters testamentary, dated the day of, 191.., have been issued to you and on the estate of, late of, who died on the day of at

These letters were issued by the Hon., one of the Surrogates of the County of (*New York*), the will having been proved on the day of, and petition for probate having been filed on the day of As you now actually enter upon the discharge of your duties as executor, we desire to inform you in a general way as to your duties and to make some suggestions to you in your representative capacity.

It is your duty, in addition to giving attention to those matters included in the enclosed memorandum which have not already been attended to:

1. To open a separate bank account in the name of the estate in a bank or trust company which is a legal depository for trust funds.
Make payments with checks upon this account. Where surety company is on bond, checks usually have to be countersigned by the surety. Mingling the funds of the estate with your own is a ground for your removal (§ 2574, Code) and a misdemeanor (§ 2664-a, Code).
2. To take all steps legally necessary to reduce to possession all the personal property, tangible and intangible, of the testator. (See instructions and law on back of Letters Testamentary, if any.)
3. To notify banks, trust and safe deposit companies in which decedent had deposits, and corporations in which decedent held stock, by leaving certificate of your appointment with them.

These institutions require waivers from the State Comptroller before parting with securities or money of the decedent, and decline to permit decedent's safe deposit box to be opened prior to the obtaining of such waiver, except in the presence of a representative of the State Comptroller. Such waivers can be obtained from the local Transfer Tax Attorney for the State Comptroller.

Instructions to Executor

4. If the decedent was a policyholder of an insurance company or a member of any death benefit order or association, and such insurance is payable to the estate, to notify the insurance company or association of decedent's death and obtain forms for proof of death.
Present these proofs with certificate of your appointment and collect insurance.
5. To notify all debtors of your appointment and demand payment of account and collect all outstanding claims due decedent.
6. To take all papers of decedent into your possession and make full inventory of all personal property in duplicates in presence of counsel or other witness.
If the affairs of the deceased are at all complicated or there is the slightest anticipation of misunderstanding, or possible insolvency of the estate, consult counsel and have appraisal made by appraisers appointed by the court instead of relying on private inventory. If you find that any of the assets of the estate are in the hands of third parties who refuse to deliver them, at once notify counsel so that proceedings may be taken to secure possession of same. Any debt owing to decedent from yourself must be treated as an asset of the estate and included in the inventory.
7. If there is any considerable sum of money in your hands at any time, to place the same at interest in some trust company, which is a legal depository for trust fund or in a savings bank.
8. To keep a detailed account of receipts and disbursements, and to this end you can obtain executor's and administrator's account books, or a copy of final account blank for form.
9. To obtain blank forms of proof of claim, have vouchers printed and obtain other necessary stationery, etc., of forms to be most used, according to nature of estate.
10. To commence publication of a notice to creditors to present claims immediately after the issuance of letters testamentary and for this purpose to apply to the Surrogate to designate the newspapers.

Instructions to Executor

You cannot account or proceed to distribute the estate until one year after your qualification unless you publish such for six months. If such notice is published, you can account and distribute fifteen days after expiration of such notice. Counsel should be consulted about the publication of the notice.

11. Before paying any claim to insist upon a sworn proof of claim and to take receipts in duplicate for such payments together with a waiver of citation upon accounting.
12. To examine all leases and contracts and other documents to which decedent was a party, and ascertain decedent's rights and liabilities thereunder.
13. To proceed at once to wind up any business deceased was engaged in individually.
If deceased had partners, it would be wise to consult counsel as to your rights in such partnership.*
14. To convert all assets into cash unless all parties, interested or who have appeared, consent in writing to retention in kind, or unless sale would cause a loss to parties entitled to property. Unless the will otherwise directs, sale may be at public or private sale and may be upon credit of not more than one year, provided approved security is obtained and notice given to all parties interested. If the value of the property to be sold is uncertain or largely dependent upon the time and manner of the sale, you should apply to the Surrogate for instructions before proceeding to sell and for that purpose advice of counsel is necessary.
15. To retain possession of any property found in which others are supposed to have or claim any interest, until advice of counsel is obtained.
If any sealed and endorsed packages are found among decedent's effects, do not open or disturb same without legal advice, since the order in which these documents lie or their related position may be of importance.
16. To obtain a blank book and keep a memorandum as to everything that is done and record every important transaction or conversation therein.

* See Letter to Surviving Partner, page 193.

Instructions to Executor

17. It is usual, but not necessary to pay witnesses to the will a small amount for their attendance upon probate, as for example, five, ten, or more dollars, according to amount of estate or other considerations.
18. To pay funeral expenses and expenses of probate, but make no other payments without consulting counsel, and when paying a legacy to take waiver of citation of accounting proceedings and get receipt and release. If in your opinion the bill for funeral expenses is excessive, viewed from the station in life of the decedent, do not pay without consulting counsel.
19. To notify fire, liability and burglary insurance companies of death and change of ownership of property and obtain binders and have insurance policies held by testator transferred to estate.
20. To compromise no debt owing to decedent without leave of court.
21. To promptly reject any claim not known or reasonably believed to be valid.
22. To obtain advice of counsel before making any payment or apportionment to widow in lieu of dower. If any question regarding gifts by the decedent is involved, consult counsel before acting. See *Matter of Van Alstyne*, 207 N. Y. 298.
23. To bear in mind that your signature to an instrument as one of two executors may bind the estate, but as to all matters wherein you act as trustee under the will the signature of your co-trustee is necessary to make the instrument valid. Your signature to a contract as executor also binds you individually unless the contract expressly limits your obligations thereunder to your representative capacity.
24. To pay no taxes of any kind, principal or interest on mortgage or premium on fire or other insurance without consulting counsel.
25. If testator's death was caused by negligent injury and an action lies under the Employers' Liability Act, and decedent did not give the required notice thereunder, see that such notice * is given within sixty days after your appointment. Counsel should be consulted as to the drawing and service of this notice.

* See Forms, p. 262 *et seq.* As to claim against municipal corporation, see p. 252 *et seq.*

Instructions to Executor

26. If you are appointed testamentary guardian by the will, to qualify within thirty days after Letters Testamentary are issued to you or apply to Surrogate for three months' extension of time within which to qualify.

27. To make no investments without consulting counsel.

"An executor, administrator, trustee or other person holding trust funds for investment may invest the same in the same kind of securities as those in which savings banks of this state are by law authorized to invest the money deposited therein, and the income derived therefrom, and in bonds and mortgages on unincumbered real property in this state worth fifty per centum more than the amount loaned thereon. Any executor, administrator, trustee or other person holding trust funds may require such personal bonds or guaranties of payment to accompany investments as may seem prudent, and all premiums paid on such guaranties may be charged to or paid out of income, providing that such charge or payment be not more than at the rate of one-half of one per centum per annum on the par value of such investments. But no trustee shall purchase securities hereunder from himself."

The securities in which moneys deposited in a savings bank may be invested are enumerated in Decedent Estate Law, § 111.

Section 239 of the Banking Law; Cons. Laws, Laws 1914, ch. 369; Cons. Laws, ch. 2, as amended by Laws 1915, chs. 515, 269; and Laws 1916, ch. 363, in effect May 1, 1916.

28. To pay or make deposit with State Comptroller to cover transfer tax within six months after testator's death in order to obtain five per cent. allowance, and in any event see that transfer tax is paid or an order obtained exempting the estate from tax.

And within 30 days after qualifying or after coming into possession of any property of decedent to give the Collector of Internal Revenue of the District where decedent was domiciled, any notice required by the Federal Estate Law upon official forms. Advice of counsel should be obtained upon this point.

Instructions to Executor

29. As executors it may be generally stated that you only administer upon the personal property, and, unless directed to do so by the will, you have nothing to do with the real property so long as there is sufficient personalty to pay decedent's debts. But as to apportionment of rents consult § 275, Real Property Law.
30. Your commissions, to be divided among you, will be five per cent. on the first \$1,000, two and one-half per cent. on the next \$10,000, and one per cent. on the balance, of all sums received and paid out by you. If the gross value of the principal of the estate or fund accounted for amounts to \$100,000 or more, each executor is entitled full commission provided there are not more than three, in which case the compensation to which three would be entitled must be apportioned among them according to the services rendered by them respectively. These commissions are not subject to use by you until your accounts are settled by the surrogate. A short method of computing commissions where the estate is over \$10,000 is to take one per cent. of the total and add \$190.

Personal property not disposed of by will passes according to the Statute of Distributions. (§§ 80-104, Decedent Estate Law, Consolidated Laws, chap. 13. See also *Robbins v. McClure*, 100 N. Y. 328; 167 App. Div. 264.)

Real property not disposed of by will descends according to the Statute of Descent. (§§ 80-104, Decedent Estate Law, Consolidated Laws, chap. 13. See *Hiles v. Fischer*, 144 N. Y. 306; 141 App. Div. 253; 160 App. Div. 353, and University Law Review, vol. 1, page 113 *et seq.*)

V

LETTER TO ADMINISTRATOR

Dear Sir:

We desire to advise you that letters of administration, dated the day of, 19.., have been issued to you on the estate of, late of, who died on the day of at

These letters were issued by the Hon., one of the Surrogates of the County of (*New York*,) and petition for such letters having been filed on the day of As you now actually enter upon the discharge of your duties as administrator, we desire to inform you in a general way as to your duties and to offer some suggestions to you concerning performance of them.

It is your duty, in addition to giving attention to those matters included in the enclosed memorandum which have not already been attended to:

1. To open a separate bank account in the name of the estate in a bank or trust company which is a legal depository for trust funds.

Make payments with checks upon this account. Where surety company is on bond, checks usually have to be countersigned by the surety. Mingling the funds of the estate with your own, is a ground for your removal, § 2574, Code, and a misdemeanor, § 2664-a, Code.

2. To take all steps legally necessary to reduce to possession all the personal property, tangible and intangible. (See instructions and law, if any, on back of Letters of Administration.)
3. To notify banks, trust and safe deposit companies, in which decedent had deposits, and corporations in which decedent held stock, by leaving certificate of your appointment with them.

These institutions require waivers from the State Comptroller before parting with securities or money of the decedent, and decline to permit decedent's safe deposit box to be opened, prior to the obtaining of such waiver, except in the presence of a representative of the State Comptroller. Such waivers can be obtained from the local Transfer Tax Attorney for the State Comptroller.

Instructions to Administrator

4. If the decedent was a policyholder of an insurance company or a member of any death benefit order or association and such insurance is payable to the estate, to notify the insurance company or association of decedent's death and obtain forms for proof of death. Present these proofs with certificate of your appointment and collect insurance.
5. To notify all debtors of your appointment and demand payment of account and collect all outstanding debts due decedent.
6. To take all personal property and papers of decedent into your possession and make full inventory of all personal property in duplicate in presence of counsel or other witness.

If the affairs of the deceased are at all complicated or there is the slightest anticipation of misunderstanding, or possible insolvency of the estate, consult counsel and have appraisal made by appraisers appointed by the court instead of relying on private inventory. If you find that any of the assets of the estate are in the hands of third parties who refuse to deliver them, at once notify counsel so that proceedings may be taken to secure possession of same. Any debt owing to decedent from yourself must be treated as an asset of the estate and included in the inventory.

7. If there is a considerable sum of money in your hands at any time, to place the same at interest in some trust company, which is a legal depository for trust funds or in a savings bank.
8. To keep a detailed account of receipts and disbursements, and to this end you can obtain an administrator's account book.
9. To commence publication of a notice to creditors to present claims immediately after the issuance of letters of administration and for this purpose, to apply to the Surrogate to designate the newspapers.

You cannot account or proceed to distribute the estate until one year after your qualification unless you publish, once a week for six months, notice to creditors to present claims. If such notice is published, you can account and distribute any time after expiration of such notice. Counsel should be consulted about the publication of the notice.

Instructions to Administrator

10. Before paying any claim to insist upon a sworn proof of claim and to take receipts in duplicate for such payments together with a waiver of citation upon accounting.
11. To examine all leases and contracts and other documents to which decedent was a party, and ascertain decedent's rights and liabilities thereunder. As to apportionment of rents in which estate may have an interest consult § 275, Real Property Law.
12. To proceed to wind up any business deceased was engaged in individually, but if he had partners, it would be wise to consult counsel as to your rights in such partnership.*
13. To convert all assets into cash unless all parties, interested or who have appeared, consent in writing to retention in kind, or unless sale would cause a loss to parties entitled to property.

Assets of the estate may be sold at public or private sale and may be upon credit of not more than one year, provided approved security is obtained and notice given to all parties interested. If the value of the property to be sold is uncertain or largely dependent upon the time and manner of the sale, you should apply to the Surrogate for instructions before proceedings to sell and for that purpose advice of counsel is necessary.

14. To retain possession of any property in which others are supposed to have or claim any interest, until advice of counsel is obtained.

And if any sealed or indorsed packages are found among decedent's effects, do not open or disturb same without legal advice, since the order in which these documents lie or their related position may be of importance.

15. To obtain a blank book and keep a memorandum of everything that is done and record every important transaction or conversation therein.
16. To pay funeral expenses and expenses of administration, but to make no other payments without advice of counsel.

When paying a distributive share, take waiver of citation of accounting proceedings, and get receipt and release. If in your opinion the bill for funeral expenses is excessive, viewed from the station in life of decedent, consult counsel before paying same.

* See Letter to Surviving Partner, p. 193.

Instructions to Administrator

17. To notify fire, liability and burglary insurance companies of death and change of ownership of all personal property and obtain binders, and have insurance policies held by decedent transferred to estate.
18. To compromise no claim due the estate without leave of court.
19. To promptly reject any claim presented against the estate not known or reasonably believed to be valid.
20. To make no investments of the funds of the estate and to make no contracts purporting to bind the estate.

Your signature to any such contract will create a personal liability and you will have great difficulty in obtaining reimbursement from the estate for any sums expended in this way.

21. To pay no taxes of any kind, principal or interest on a mortgage or premium on fire or other insurance without advice of counsel.
22. If testator's death was caused by negligent injury and an action lies under the Employers' Liability Act, and decedent did not give the required notice * thereunder, to see that such notice is given within sixty days after your appointment. Counsel should be consulted as to drawing and service of this notice.
23. To pay or make deposit with State Comptroller to cover transfer tax within six months after testator's death in order to obtain 5 per cent. allowance and in any event to see that transfer tax is paid or an order obtained exempting the estate from tax.

And within 30 days after qualification or after coming into possession of any property of decedent, to give to the Collector of Internal Revenue of the District where decedent was domiciled, any notice required by the Federal Estate Law, upon official forms. Advice of counsel should be obtained on this point.

24. If any question regarding gifts by the decedent is involved, consult Counsel before acting. See *Matter of Van Alstyne*, 207 N. Y. 298.

As to exemption for benefit of family, see § 2670, Code; and as to whether money can be allowed in lieu, see cases cited in 64 *Misc.* 662. As to what are deemed assets, see §§ 2672, 2673, Code. As to apportionment of rents, annuities and dividends, see

* See Forms, p. 262 et seq. As to claims against municipal corporation, see p. 252 et seq.

Instructions to Administrator

§ 2674, Code. As to proceedings to discover property withheld, see § 2675, Code.

Your commissions, (to be divided among you,) will be 5 per cent. on the first \$1,000, 2½ per cent. on the next 10,000, and 1 per cent. on the balance, of all sums received and paid out by you. If the gross value of the principal of the estate or fund accounted for amounts to \$100,000 or more, each administrator is entitled to full commission provided there are not more than three, in which case the compensation to which three would be entitled must be apportioned among them according to the services rendered by them respectively. These commissions are not subject to use by you until your accounts are settled by the Surrogate. A short method of computing commissions where the estate is over \$10,000 is to take 1 per cent. of the total and add \$190.

VI

LETTER TO ASSIGNEE FOR BENEFIT OF CREDITORS

Dear Sir:

As you are assignee of, under a general assignment for the benefit of creditors, we beg to hand to you the following letter of general information as to your duties which we believe will greatly assist you:

We think it important to advise you at the very outset that while an effort has been made to conform the administration of insolvents' estates by means of an assignment for the benefit of creditors to the principles and procedure of the Bankruptcy Law, the decisions of the Federal courts still indicate many difficulties and dangers which an assignee must be on his guard to avoid.

The making of the assignment was an act of bankruptcy on the part of your assignor to which there is no defense. It is therefore within the power of a small number of creditors for four months after the making of the assignment to bring the assigned estate into the jurisdiction of the Bankruptcy Court. If this is done the assets are subject to the direction of that Court and you become a mere custodian without title without any authority to take any action and liable to be called upon to account to that Court in accordance with the principles of Bankruptcy administration. You may be at once superseded by a receiver in bankruptcy and you may be held liable for the assigned estate even though you have in good faith and in reliance on the State Statute disposed of part of the same, if the Federal Court does not approve your proceedings and allow your account. Hence the expediency of preparing yourself at once to show if a bankruptcy intervenes that:

1. You have no interest in the assigned estate adverse to general creditors;
2. That you are acting with the consent and approval of a majority of the creditors in number and amount of claims, and not as the choice of the assignor;
3. That you have made no distribution of assets and taken no steps except diligent efforts to collect and conserve the assets of the insolvent and to avoid losses for four months after your appointment. You are likely to have difficulty

Instructions to Assignee for Creditors

in procuring a surety company to execute your bond unless assurances of strict procedure along these lines is given.

Cause the deed of assignment to be recorded in the proper County Clerk's office, and obtain several certified copies.

(a) In the case of an individual:

in the county where the debtor resided or carried on his business at the date of the assignment.

(b) In the case of a co-partnership:

in the county where the true place of business of such a co-partnership is situated.

To avoid question of your title or authority, controversy with any of the partners, and possible personal liability, before you do anything other or further than taking possession of and preserving the assigned property, make sure that the assignment to you was made and acknowledged by *all* the partners, or at least, that *all* authorized in some express or binding manner, the same.

(c) In case of a corporation:

in the county where its principal place of business is situated.

Assure yourself before taking any active or affirmative steps for the disposition of the assigned property, that the assignment was made in a manner and by persons proper to bind the corporation.

In all cases where an assignment is made by a corporation, the right to recover the amount due from stockholders on unpaid capital stock issued to or subscribed for by them passes to the assignee whether mentioned in the assignment or not.

When real property is part of the property assigned and is situated in a county other than the one in which the original assignment is required to be recorded, cause certified copies to be filed and recorded in each county where such real property is situated.

Where property is situated outside of this State, consult local counsel as to filing of same, and record proper instrument of conveyance executed by assignor.

Have extra copies of assignment made or printed.

You have no authority to sell, dispose of or convert to the purposes of your trust any of the assigned property until you have qualified by entering into a bond to the People of the State in amount ordered and directed by the Court. While you have

Instructions to Assignee for Creditors

30 days after the recording of this assignment, to do this it is desirable to qualify as soon as possible and in some cases it is advisable to file at once a provisional bond, which may be ordered by the Court. Counsel should be promptly consulted on this point.

Take actual and tangible possession of the office, store, factory or other place of business, and property of the assignor immediately.

Take possession of any cash found and open new bank account in your name as assignee with same. Leave copy of general assignment and the certificate of the Clerk of the Court that you have qualified as assignee, with such bank and pay all bills solely by check on this account. Do not mingle funds of assignor with your own funds.

Make inventory of each paper or document and security found in the safe, desk or other place of assignor, and of all books of account.

Notify immediately each bank and trust company in which assignor has funds, and as soon as possible serve them with certified copies of assignment, and with certificates of the Clerk of the Court that you have qualified as assignee. Draw funds out of such bank and deposit them in a new account. Notify safe deposit companies and corporations in which assignor held stock.

Do not accept any goods delivered or consigned to assignor after assignment without consulting counsel.

As soon as possible retain local counsel in places, especially out of the State, where assignor owns and has property.

Examine leases, contracts, mortgages and other documents and any other papers that might require immediate attention or any notice to be given.

Examine fire, life, casualty or other insurance policies, collectible by assignee, and notify companies of change of ownership and arrange as to new insurance.

After you have qualified, obtain authorization from the Court to continue the business of assignor, if necessary, in the best interests of the estate, for limited period. In applying for authority to so continue after the expiration of the first period, show generally the result of such continuance up to the time of such further application, and the existence or prospect of a profit therefrom.

Instructions to Assignee for Creditors

If there is perishable property, which means not only property which is physically perishable, but that the *value* of which would be destroyed, and there will be a loss if the same is not sold, immediately apply to the Court for leave to sell.

Put watchman in immediate charge of places requiring same.
Order combination to be changed on safe.

Notify principal creditors of assignment by letter.

File order with Post Office to have mail addressed to assignor sent to assignee. If ineffectual, obtain order *ex parte* directing the postmaster to deliver such mail to the assignee.

Prepare statement for newspapers as to matter you desire to publish.

Make arrangements with lessor as to temporarily continuing in possession of premises. The assignee should immediately after taking possession of the property, ascertain whether the lease or leasehold has any value, and whether it can be sold for profit. If it has no value, the assignee should at once disaffirm it as far as he is concerned and make arrangements above suggested. The assignee has a reasonable time to determine whether he shall accept or reject the lease. If he occupies the premises for any length of time he may possibly render himself personally liable for the rent.

If surety company is on your bond, notify banks in which you have money deposited that the same is to be drawn upon counter-signature of surety company, and notify surety company that banks have been so notified, and keep it advised of deposits made.

Order rubber stamps for indorsements of checks and one containing name of assignee, and thereunder "assignee of (insert name of assignor)" for the benefit of creditors, and one "Received payment, day of , 191 (Name of assignee)," thereunder "assignee for the benefit of creditors of (Name of assignor)."

Order letter paper, and envelopes with memorandum on outside in corner as follows: (If not called for in ten days, postmaster will please return to (insert name of assignee) Assignee, ... St., New York City.) See that every communication, and especially every notice sent during your administration of the assigned estate is sent in an envelope so endorsed.

Remember that your assignor may be put into bankruptcy at any time within four months from the making of assignment, in

Instructions to Assignee for Creditors

which case assignment becomes void. If this is done, assignee is not entitled to any commissions or any allowance for counsel fee, but may be allowed, in an action for an accounting brought by the trustee in bankruptcy, compensation for such services as he may have rendered which have proven beneficial to the estate, and which the trustee in bankruptcy might have himself performed out of which he is supposed to pay for his counsel. (Examine Bankruptcy Law.)

Make arrangements in regard to temporary use of telephone, motor, and such other services as the assignor may be enjoying under contract.

Make no payments whatever, excepting for preservation of perishable property, nor sales, until after your bond has been approved and filed, and after bond is filed pay employees as hereinafter outlined. But if there is perishable property which must be quickly sold and it is imperatively necessary to make other sales before the inventory has been made and the bond filed, it is well to apply to the Court for the giving of a provisional bond, which in the First Department at least, may be ordered and filed in proper cases immediately after the assignment.

Reject unprofitable property and contracts.

Ascertain whether any judgment of record in favor of assignor and file notices as provided in § 1263, Code.

* Make up schedules and inventory as required by law, remembering that assignor has 20 days in which to file same, and if he fails to do so within 20 days, assignee should file a provisional bond (although this is not usual), but in all events has 10 days' additional time to make up schedules and inventory, and when schedules and inventory are filed by assignee be careful to have

*It is difficult, if not impossible, to reconcile the words "ten" in Section 6 of the Statute with the word "twenty" in subdivision 5 of section 4. It probably means, and has been so construed that the

(a) assignor has 20 days after the assignment within which to file the inventory or schedule,

(b) assignee has thirty days after the assignment within which to enter into and file his bond and also to file the inventory or schedule "as far as he can,"

(c) if the assignor has filed the inventory or schedule within the 20 days, then the assets are known, and the permanent bond of the assignee can be determined and ordered,

(d) but if he has not, then the said assets and bond cannot be fully or accurately known or stated, and the assignee may and should apply for leave to file a provisional bond. However, provisional bonds are authorized in the First Department immediately.

Instructions to Assignee for Creditors

affidavit of disinterested experts as to value of various classes of property included among assets of assignor. In making up the inventory carefully note in separate columns the nominal and actual values of the personal property, and in case of real property the assignee should state its full and true value, taking into consideration the actual sales during the previous year. There should also be a recapitulation in the following manner:

Debts and liabilities amount to.....	\$
Assets, nominal value.....	\$
Assets, actual value.....	\$

State incumbrances on property, showing the equity of the estate therein, as the penalty of the bond is determined by the amount of said equity.

The assignee has no power to perform contracts made by the assignor. It may be advisable, however, to complete them, but before so doing he should obtain authority from the Court, either by specific application in the case of contracts of especial magnitude or importance, or by application to continue the assignor's business, in which case the terms and advantages of the various contracts, performance of which is incidental to such continuance, should be fully set forth. If any person has received, taken or in any manner interfered with the estate, property or effects of the debtor in fraud of his creditors and which might have been avoided by a creditor or the assignor, apply for leave to bring an action to recover the property so transferred.

Since the assignee has the exclusive right of action, it follows that he will be liable for a negligent omission to assail fraudulent transfers made by the assignor prior to the assignment. He may ask for instructions from the creditors and for indemnity if they desire him to proceed with such actions.

Every assignee must open and keep full, exact and regular books of account of all receipts, payments and expenditures of money by him, which said books shall always, during business hours, be open to the inspection of any person interested in the trust estate.

Creditors have the right to examine books of the assignor as well as those of the assignee.

All property must be turned into money. The assignee cannot sell on credit nor at retail, nor at private sale, but all sales must be had at public auction unless otherwise ordered by the judge. Upon application to the judge, the assignee may be authorized to

Instructions to Assignee for Creditors

sell any portion of the estate at private sale, in which case he must keep an accurate record of each article sold, the price received therefor and to whom sold, which account he must file at once. If all or part of the estate is perishable, as above defined, the court, upon application stating that fact, and showing the nature and location of such property, and that there will be loss if an immediate sale is not had, may order its sale with or without notice to creditors.

In making sales at auction of personal property, the assignee shall give at least ten days' notice of the time and place of the sale and of the articles to be sold by advertisement in one or more newspapers, and he shall give notice of the sale at auction of any real estate at least twenty days before such sale. Upon such sales the assignee shall sell by printed catalogue, in parcels, and shall file a copy of such catalogue, with the prices obtained for the goods sold, with his final account.

When any notice is served on the creditors of the insolvent, pursuant to the provisions of the statute or rules, by mail, every envelope containing such notice shall have upon it a direction to the postmaster, at the place to which it is sent, to return the same to the sender within ten days unless called for. Upon every application made to the Court upon such service, an affidavit shall be presented showing whether any such notices have been returned.

Sales on credit should only be made with leave of the Court and it is best to have the consent of a majority of the creditors in number and amount of claims or at least of the principal creditors, preferably expressed in writing, or by their duly recorded votes at a meeting of them.

Neither the assignee, his attorney, nor anyone representing them, can purchase at the sale.

Do not compromise any claim due the estate without leave of Court. The judge may, upon the application of the assignee, and for good and sufficient cause shown and upon such terms as he may direct, authorize the assignee to sell, compromise or compound any claim or debt belonging to the estate of the debtor. But the assignee incurs a risk, because even though he have leave of Court, that will not prevent any party interested in the trust estate from showing upon the final accounting of such assignee that such debt or claim was fraudulently or negligently sold, compounded or compromised. The Court may also authorize the

Instructions to Assignee for Creditors

compromise of a claim owing by the estate, and may order a trial by jury or a referee of any disputed claim. In making application for leave to compromise claims due to or owing by the estate, the safest course is to do so upon notice to or order to show cause served upon all creditors.

Debts of the assignor may be proved and allowed against his estate which are (a) fixed liability as evidenced by a judgment absolutely owing at the time of the assignment, or (b) a claim for taxable costs incurred before the assignment, in good faith, in an action to recover a provable debt; (c) or founded upon an open account, or upon a contract, express or implied, whether due or not due.

In allowing the claims against the estate, in all cases of mutual debts or credits between the estate of the assignor and a creditor, the amount shall be stated and one debt shall be set off against the other, and the balance only shall be allowed.*

A set-off or counterclaim shall not be allowed in favor of any debtor of the assignor which (a) is not probable against the estate; or (b) was purchased by or transferred to him after the filing of the general assignment or with intent to such use and with knowledge or notice, or if he had reasonable cause to believe, that such assignor was insolvent.

If any claims are presented to the assignee which were not proved or are incorrect or false, it is the duty of the assignee to report promptly such fact to the Court and have the validity thereof determined either by a jury trial or reference ordered by the Court, or by the referee appointed to take and state the assignee's account; and he should also report promptly for allowance all claims presented to him which are not disputed.

It is not the practice to report claims for allowance from time to time, but at one time; usually with the assignee's account, in a schedule of which such claims are enumerated, unless previous to his accounting the assignee wishes to pay a dividend, pursuant to § 12 of the amended act, when he reports to the court the claims he has received and allowed, and on which he wishes to pay a dividend, and then makes application for leave to pay such dividend on notice to all creditors and persons interested.

Whenever a claim is founded upon a written instrument, unless lost or destroyed, it must be filed with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn,

* See the case of *Matter of Bluestone*, 169 App. Div. 462.

Instructions to Assignee for Creditors

but only by permission of the Court. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction must be filed under oath with the claim.

* The Court has power to allow secured creditors such sum only as to the Court seems to be owing over and above the value of their securities.

If there is a large sum of money in your hands at any time place the same in some trust company, which is a legal depository for court funds.

Never pay without obtaining proof of claim and voucher, unless the account amounts to less than \$20.

In the distribution of assets, wages or salaries actually owing to the employees of the assignor at the time of execution of the assignment for services rendered within three months prior thereto, not exceeding \$300, to each employee, are preferred before any other debt.

Present to the assignor all claims presented against his estate and have him examine their correctness and demand that he notify the assignee if any are incorrect or false.

Demand from the assignor good and sufficient instruments of transfer of all his property outside the State of New York.

Obtain order for examination under oath of the assignor, and the production of books and papers, concerning the conduct of his business, the cause of his inability to pay his debts, his dealings with his creditors and other persons who cannot account for the whereabouts of his property and all matters which may affect the administration and settlement of his estate. They are required by law to comply.

Every verified claim of a creditor must set forth whether any, and if so, what securities are held for such claim and whether any, and if so, what payments have been made thereon.

* Despite the effort or intent of the Legislature to coördinate the Debtor and Creditor Law to or with the Bankruptcy Law, subdivision 8 of section 15 of the Statute, it would seem does not change the existing judicially declared law to the effect that the secured creditor may hold and realize on his security and may thereafter or in addition receive also dividend, not on the balance, but on his entire claim, provided that from *both* sources he does not *receive more than his entire claim*. This was held in the Matter of Seymour Johnson and Co., involving a stock exchange seat. The new section has not been judicially interpreted; its language is meager or indefinite; but it would no doubt be strictly construed and it does not define the word "allow" or say that the court shall have power "to *allow the claims* of secured creditors *for such sums only*, etc., etc.

Instructions to Assignee for Creditors

* Remember that creditors, or parties otherwise interested, if the judge so directs, are entitled to have at least ten days' notice by mail to their respective addresses as they appear in the schedule filed by the assignor, or at such other addresses as they shall have filed with the assignee, of (a) all proposed sales of property, (b) the declaration and time of payment of dividends; (c) the filing account of the assignee and of the hearing thereon; (d) the proposed compromise of any controversy. Such notice may be published as the judge shall direct and must be returnable in Court.

On the petition of the assignee, the judge may cause such notices to be sent or published.

Have any exemption claimed by the assignor passed upon by the Court.

The Court has power on petition to order the examination of witnesses and production of books and papers before the assignee who has power to administer oath and compel the attendance of witnesses and production of books, records and papers by the issuance of subpoena and any evidence taken must be filed in the County Clerk's office.

Claims which for want of record or for other reasons would not have been valid as against the claims of the creditors of the assignor are not liens against the estate.

The Court, in its discretion, may order a trial by jury or before a referee, of any disputed claim.

The assignee is entitled to receive for his services a commission not exceeding 5 per cent on the whole sum which comes into his hands, except in a case where such percentage does not equal \$200, in which case the Court may grant such a sum, which with such percentage shall equal \$200. If the assignee continues the business, the Court may allow him additional compensation equal to what he might be allowed, as hereinabove set forth; in applying for such allowance show result of such continuance, emphasizing any net profit received therefrom.

The actual and necessary expenses incurred by the assignee in the administration of the estate must be reported in detail, under oath, and if approved by the Court, they will be allowed.

When in doubt as to the wisdom or propriety of any action contemplated in the administration of the assigned estate, seek the advice or instruction of the Court, on notice of motion, or

* See *Matter of Gurian*, 92 Misc. 296.

 Assignee — Form of Notice

order to show cause, to the assignor, your surety and all creditors, or obtain their decision thereon, preferably expressed in writing or by their duly recorded votes at a meeting of them.

Letter to Debtor of Assignors

(Name of Assignors.)

(Name of Assignee), Assignee.

(Business address of Assignee.)

Date

Dear Sir:

I beg to notify you that on the (date of assignment), (name of assignors) of (insert place), doing business under the name of (insert name), made a general assignment for the benefit of creditors to me.

I find upon the books of the firm that you are indebted to him in the sum of \$., a statement of which is herein inclosed.

Will you kindly send me check for this amount in order that the estate may be closed as soon as possible.

Yours truly,

(Name of Assignee),

Assignee of (name of Assignor).

Office and P. O. Address,

(Address of Assignee.)

Form of Letter to Be Sent to Banks in Which Assignor Has Account

New York, ..., 19..

The National Bank,

. City.

Gentlemen:

I hereby notify you that, doing business under the name of, having an account in your bank, made a general assignment, for the benefit of his creditors, dated, 19.., and filed and recorded this day to me, and that funds are to be paid out upon my order only.

Yours truly,

(Signed)

As assignee of for the benefit
of the Creditors.

 Assignee for Creditors — Memorandum

Record of Dates, Names and Useful Data

The following to be typewritten and filled in and checked off in each case.

*Name.**Residence.*

Name of assignors.

Name under which assignors did business.

Principal place of business at date of assignment.

Name of assignee.

Residence.

Business address of assignee.

Business of assignors.

Business of assignee.

Date of assignment.

Date of acknowledgment.

Corporation, individual, or co-partnership.

Recorded in office of Clerk of County of (New York) on the
 day of, 19..

Also recorded in the County of, on
 the day of, 19..,
 because of real estate owned by assignors in such county.

Provisional bond ordered by order of Mr. Justice,
 entered in the sum of \$..... Surety
 Company.

* Bond filed in (New York) County Clerk's office

Schedules and inventory filed by assignor on the day
 of, 19..

Total:

Direct.

Liabilities of assignor, \$.....

Contingent.

Nominal assets, \$.....

Actual assets, \$.....

Final bond ordered by Judge for \$..... on
 the day of, 19..

Final bond of Company of
 presented and approved by Judge and filed

*As to when to be filed, compare Debtor and Creditor Law, §§ 4, 6. In the First Department provisional bonds can be applied for immediately after making of assignment.

Assignee for Creditors — Memorandum

in the office of the Clerk of the County of (New York) on the.....day of....., 19..

Petition for order to advertise for creditors.....
verified, 19..

Order, dated, 19.., made by Hon.
....., Judge of the N. Y. Supreme Court.

Papers designated, and:

For what period of time.

First publication commenced.

Publication ends. (At least *one week* before day to present claims.)

Last day to present claims. (Not less than *ten days* from day of publication.)

Obtain copies of advertisement.

Obtain affidavit of names of creditors appearing upon books of assignor.

Last day to mail printed notices to creditors (compare 5 Debtor and Creditor Law and Rule VI Special Term Rules, First Dist.).

Notices to present claims mailed to each of the creditors whose names appear on the books of assignors by.....
date....., 19..

Affidavit of mailing made by.....

Sworn to....., 19..

Notices returned.

Obtain proof of publication of advertisement to present claims.

Sworn to....., 19.., by.....

Date of examination of assignor

Received proof of claims duly verified, showing name, address, amount due, and when due and what for.

Ten days' notice mailed.

(a) Proposed sale of property

(b) Proposed compromise

(c) Declaration of time of payment of dividend.....

(d) Filing final account and hearing thereon.....

(e) Other matters

Make up account and petition for citation.

Account and petition filed....., 19..

Date—Account verified....., 19..

Date—Petition verified....., 19..

Summary of account.

Assignee for Creditors — Memorandum

Dr.

Inventory of stock.

Inventory of accounts.

Increased by.....

Cr.

Decrease.

Expenses.

Dividend paid to

Balance

Order for citation made for by Hon., on the
..... day of, 19..

Papers designated.

Citation issued, 19..

Date returnable, 19..

Served Citation upon:

Assignor.

Assignee.

Sureties.

Creditors.

Mailed citation, 19..

Proof of mailing..... by

Affidavit of service..... by

dated....., 19..

Proof of publication of citation.....

by dated, 19..

Who appeared upon return of citation.

.....
.....
.....

Were objections filed to account?

If so, by what parties?

Order of reference by Judge.

Date, 19..

Name of referee.

Address of referee.

Hearing set for....., 19..

Notice served on assignor, assignee, sureties, and.....

Who appeared at reference (with name and address of counsel).

Amount realized from sales, \$.....

Amount realized from collections, \$.....

Amount paid out of expenses, \$.....

Amount paid wages (preferred), \$.....

VII

LETTER TO RECEIVER IN BANKRUPTCY

(*New York, Aug. 15, 1916.*)

Dear Sir:

We desire to advise you that you were appointed temporary receiver of the estate and property of (*Samuel Drummond, alleged bankrupt*) of (*the Borough of Manhattan, City of New York,*) on the (*9th*) day of (*August, 1916*) by (*Hon. Julius M. Mayer,*) Judge of the District Court of the United States for the Southern District of New York. As you are now to actually enter upon the discharge of your duties as such receiver, we desire to inform you in a general way as to your duties and make some suggestions to you in your representative capacity.

You should first obtain several certified copies of the appointing order to be filed with banks, post office, and left with keeper in charge of premises. Examine order as to conditions and restraining clauses, and any directions as to continuing business of bankrupt; also keep in mind the following:

1. No receiver in bankruptcy shall employ an attorney or counsel except upon the order of this Court and make sure that the attorney is not connected professionally or otherwise with the alleged bankrupt. Such order shall be **granted** only upon the petition of the receiver setting forth the name of the counsel whom he wishes to employ, the reasons for the selection of that person, and showing the necessity of employing any attorney or counsel and that he has no adverse interest.
2. Arrange with a surety company for receiver's bond. Execute same and have your attorney send it to United States District Court for approval. See that bond of petitioning creditors is filed, and do not file receiver's bond until creditors bond has been filed unless immediate action is necessary. Petitioning creditor's bond not necessary where alleged bankrupt consents to appointment of receiver.
3. Have your attorney determine forthwith, whether to obtain an order for the examination of the bankrupt, bookkeeper, and such other persons as might know about the affairs of the bankrupt, under and pursuant to section 21 of the

Instructions to Receiver

Bankruptcy Act, and if so, obtain such order and proceed to examine said parties forthwith as to all the property and property rights of the bankrupt, if you consider such examination desirable. If there is any property in the hands of the sheriff, or any official, belonging to the bankrupt, which may have been seized on execution, attachment or replevin, get injunction restraining the said official from disposing of same, or interfering with same, pending the election and qualification of a trustee in bankruptcy. If property of bankrupt is in hands of assignee for the benefit of creditors, demand possession of same and an accounting for any property disposed of and serve copy of demand on surety on assignee's bond. Obtain injunctions against the assignee or any person, or parties, having property which the estate may be entitled to, or may have an interest therein.

Find out all details relative to mortgages against the bankrupt's property, and have your attorney apply for injunctions from the United States Court restraining any foreclosure proceedings pending the election and qualification of a trustee.

4. Go to bankrupt's premises with your attorney or his representative, and with an assistant, who can remain in charge, if necessary, and take immediate and actual possession of all the property found therein.
5. Reduce to possession, as far as possible, all property, tangible and intangible; to do this you should take actual and immediate possession of such property, and if it is under lock and key, secure the key.
6. Take possession of all money, valuables, books of account, check-books, bank-books, returned vouchers, and all papers which may in any way tend to disclose the bankrupt's financial condition or the condition of his business and at the earliest possible moment make a memorandum or inventory of all articles in the premises and particularly those of a special value, including the details of all books of account found. It is often advisable to have bankrupt's books examined by an expert accountant, but it is usually advisable to apply for leave so to do in order not to add unnecessary expense.

Instructions to Receiver

7. Obtain all keys to premises, have safe opened and change combination if its contents are of value. Change lock on premises, unless you are positive there are no duplicate keys out.
8. If the size of the premises and the value of the stock warrant, put a keeper in possession at once, and if specially valuable, arrange for night watchman, or with a protective company for same purpose. See that certified copy of appointment order is on the premises at all times.
9. It is the duty of the bankrupt to give you all information relative to his affairs. Have an interview with him for that purpose with your attorney, and demand from him all keys, books, leases, contracts, insurance policies, documents and papers of any value, combination to safe, etc., and consult with him as to condition of business generally and any matters that need immediate attention. Give him a receipt and keep a duplicate.
10. Examine insurance policies, have bankrupt transfer his interest in same to receiver and have the bankrupt or the broker who placed the insurance transfer the interest of bankrupt to receiver. Some companies consider that a transfer to the receiver is effected by operation of law, and that no transfer is necessary. If he will not do so, take out new insurance at once and have insurance run to bankrupt and receiver as their interests may appear.
11. Post notice in a conspicuous place, of the receiver's appointment and his possession, his address, and that of his attorneys.
12. Make list of employees; positions; how long employed, and place of residence.
13. Arrange with owner of premises for amicable occupation, if possible, by receiver, so long as it is desired to occupy premises. The receiver is entitled to a reasonable time to dispose of the property, paying for the use and occupation during the time so occupied, and the landlord may be restrained from interfering with such occupancy.
14. Have your attorney obtain several certified copies of appointing order.
15. Notify banks, trust and safe deposit companies of your appointment by serving upon them certified copies of the order appointing you temporary receiver.

Instructions to Receiver

16. Notify superintendent of general delivery at post office to deliver bankrupt's mail to receiver, sending him certified copy of appointing order with written request.
17. Notify banks in which bankrupt had account, and serve them with a certified copy of appointing order. Have bank book balanced and draw check on bank for balance.
18. Notify telephone, gas, and electric light companies, etc., of receivership, and arrange with them if you wish service continued.
19. Keep a detailed record of whatever you do relating to the estate, which will show all moneys received and paid out, letters written, acts done, and a summary of any important conversations. In general, confine your acts to getting possession of the property and assets of the bankrupt estate, and take no part in controversies between the various creditors, save as the same may tend to uncover further property. If proofs of claim are filed with you, you should return them or forward them to the referee. If necessary open new set of books.
20. If bankrupt removed goods prior to bankruptcy, inquire of employees or neighbors for any facts which may subsequently be of value, should you wish to locate same.
21. Give notice of the receivership by letter, and personally if the matter is of sufficient importance, to all debtors on bankrupt's books, etc., and demand payment, and make utmost effort to collect. If immediate suit is necessary, apply to Court promptly for authority.
22. If receiver is to continue business, examine into salary list and expenses, including rent, and expected income.
23. Make general and complete inventory of stock and fixtures.
24. Open a receiver's account with one of the authorized banks or trust companies and see that interest is allowed on account.
25. If stock is perishable, receiver should apply for leave to sell at once at the best price he can get. If the season is such that an early sale is best for the estate, apply to the Court for appointment of appraisers, and permission to sell; if otherwise, leave such matters to the trustee to be subsequently elected. Appraisers should know of cost of goods; how same will sell at public auction; and at least one of them is usually nominated by the Court.

Instructions to Receiver

26. It may be desirable to have bankrupt's assets appraised; if so, follow the course here outlined.

- (a) Have order for appraisement and sale in one order.
- (b) Notify appraisers designated and arrange date and notify bankrupt to be present and aid in the appraisement.
- (c) Have appraiser's oath and statement prepared and a typewritten copy of your inventory.
- (d) Have appraisers take oath, make appraisal, and statement signed by all. It need not be sworn to but must be filed.

A sale at the bankrupt's place of business will usually give the best results, since the stock and fixtures can be displayed there to the best advantage. But when the rent is high and the fixtures are of little value, it may be advantageous to remove the stock to the Auctioneer's salesrooms. The value of the lease of the bankrupt's premises must be investigated. It is frequently a valuable asset.

Be present in person at the sale.

27. In arranging for the sale, the following will be found helpful:

- (a) First note what the order requires to be sold.
- (b) Sales of the property of bankrupt estates in New York City must be by public auction by the U. S. Official Auctioneer, unless otherwise specially ordered. Each district makes its own rules relative thereto.
- (c) Arrange with official auctioneer for time and place of sale, removal of goods, if sale not to be had at bankrupt's place of business, and for the lotting and cataloguing of the stock.
- (d) Notice of auction sales must be given to all known creditors by mail. In the City of New York, by advertisement in the New York Times and Daily Trade Record. The newspapers wherein advertisements should be published, are designated in Bankruptcy Rules 4 and 17.
- (e) Arrange for advertising sale, securing sufficient notices to send to all such creditors and trades-

Instructions to Receiver

men interested in the kind of merchandise to be sold.

If you desire, the auctioneer will place the advertising.

In New York City the sale must be advertised and the notices mailed at least five days before the day of sale, unless a shorter notice is specially ordered, as in cases where the stock is perishable. Advertisements must also be published on the morning of the day of sale.

Further advertising is at the option of the Receiver, and is not generally advisable. Only on order of court in S. D. N. Y.

- (f) Publish notice of sale.
- (g) Mail the notice of sale to all creditors, to the appraisers, the bankrupt and his attorney, and the attorneys for the petitioning creditors and to lienors.
- (h) At least two days before the sale, a conspicuous notice of such sale must be placed on the front of the premises where the sale is to take place, and the property must be placed on exhibition there.
- (i) File appraisalment before the sale.
- (j) The receiver may direct that the goods be sold first in bulk and then in lots, the highest aggregate being accepted, or in any other manner, in his discretion.
- (k) If the sale is not a simple auction sale, the method to be adopted and any other terms of sale must be printed on the catalogue and announced by the auctioneer before the sale.
- (l) The auctioneer must also announce before each sale and the catalogue must contain a statement that no sale will be completed without the special order of the court, unless the sale realizes seventy-five per cent. or more of the appraised value of the goods sold.
- (m) If a confirmation is necessary, prepare and submit the petition immediately. Delay involves more rent and expense.

- (n) Any goods replevined or reclaimed or for any cause withdrawn from the sale, must be set apart and conspicuously marked "Withdrawn from sale," and such fact must be announced by the auctioneer before the sale.
 - (o) If you desire, the auctioneer will store the account books and papers subject to your order. But he is not required to hold them longer than one year.
 - (p) The auctioneer will be allowed a reasonable charge for the storage of goods, if not sold by him, and his reasonable disbursements for necessary labor, cataloguing, printing, insurance, and all other actual and necessary disbursements; also commissions upon the proceeds of sales made by him, as follows: Four per cent. on the first five thousand dollars, or any part thereof; two per cent. on the next ten thousand dollars, or any part thereof, and one per cent. on any additional amount. No other compensation is allowed the auctioneer.
 - (q) In the Southern District of New York, Rules 16 to 22 of the Bankruptcy Rules, S. D. N. Y., should be consulted and closely followed.

In various districts consult the local rules of that district as to the method of conducting sales, etc.
28. Do not carry on business for more than 5 days without order of court; if conditions warrant a temporary continuation of the business, apply to the court for that power, unless the order already so authorizes, and compromise and adjust no claims and give no releases or acquittances unless on application to the court.
29. On vacating premises, which should be done as soon as possible in order to keep down expenses, see that the keys and premises are properly surrendered to landlord or his agents.
30. Have your attorney attend to all legal matters, such as petitions, orders, dispossession, reclamation proceedings, etc., and have certified copies made of such important orders, etc., as may be necessary. There is no charge by the clerk of court for such certification for receiver.

Instructions to Receiver

31. Attend the examination of the bankrupt and other witnesses before the commissioner or referee, as you may thereby discover assets and obtain valuable information.
32. Attend first meeting of creditors before referee as creditors may wish information that you, as receiver, possess.
33. File your account as receiver and petition for allowance with the clerk of the court promptly after the election of a trustee, and turn over all assets and property to trustee as soon as your accounts are passed upon and the order discharging receiver entered.
34. Have your bank-book balanced after all payments as a final check on the estate.
35. See that your bond is canceled and a letter noting that fact is sent to you by the surety company on your bond.
36. Bear in mind in the performance of your duties that a bankrupt is a person against whom a petition is filed even though not adjudicated.
37. Take no important step in the administration of the estate without calling a meeting of the creditors as a guiding rule. Remember that the assets are not yours but belong to the creditors.
38. It is ordinarily the duty of receivers to press for adjudication, and if petitioning creditors delay entry thereof they must report that fact to the court.

If in involuntary cases schedules are not filed within the time allowed by law (or any extension thereof by order), receivers must cause to be made on behalf of petitioning creditors the schedule contemplated by General Order No. IX, deliver the same to a referee designated by the court and request said referee to comply with the seventh instruction to referees.

In all cases it is the duty of receivers to hasten the calling of the first meeting of creditors, and any delay in calling the same must be reported to the court.

Receivers are required to file their reports and accounts within twenty days after the election of the trustee, unless the time be extended by the court upon application of the receiver showing sufficient reason for such extension, and referees are required to enforce this rule.

VIII

LETTER TO VENDOR OF REAL PROPERTY

Dear Sir:

Please call at this office on the.....day of....., 19 ,
for the purpose of signing your contract of sale of property No.
.....street, and kindly bring with you the following:

Deed of premises to you.

Policy of title insurance.

Policies of fire insurance.

Tax and water bills (receipted).

Receipted fire insurance premium bills.

Abstract of title.

Survey.

Receipts for interest on mortgage, and all other papers which
you have concerning this property or this transaction.

See pages 21, 27.

IX

LETTER TO SURVIVING PARTNER

June 2, 1916.

Dear Sir:

In accordance with your request that we advise you concerning your rights and obligations in consequence of the death of your partner, Mr., we desire to state as follows:

The partnership was dissolved and ceased to exist on the day of your partner's death, and you should not do any more business, nor make any new contracts for the old firm, except such as are absolutely necessary to wind up its business.

It is your duty to close up the affairs of the firm, collect the assets as speedily and with as little loss as possible, complete the outstanding contracts, ascertain the debts and pay the same out of the personalty of the firm.

In regard to the real estate owned by the partnership, in the absence of any agreement expressed or implied between you and your deceased partner to the contrary, the title to one undivided half of it is in you, the title to the one undivided other half of it descends to the heirs-at-law of your late partner, if he has not disposed of the same by will, or to his devisees, if he has disposed of it by will, subject, however, to be taken by order of a court of equity to pay partnership debts, in case there is an insufficiency of personalty for that purpose. Your late partner's widow is entitled to dower in his one undivided half of the real estate, subject however, as above, to the right of a court of equity to take the real estate so far as it may be necessary, for the payment of partnership debts.

Although the courts say you can use the realty so far as it may be necessary for the payment of debts, it would be unwise for you to make a contract to sell any of the firm real estate without having it done through a receiver or a judgment of a court of equity, since you might make a contract in your own name, and if you did not succeed in having the devisees or heirs join, you would then be subject to such expense and annoyance as might follow a rejection of the title.

As to the *personal* property of the firm, you, as the surviving partner, become vested with the legal title and are entitled to the sole and exclusive possession of the same, and neither the executor,

Advice to Surviving Partner

administrator or the personal representatives of your deceased partner have any right to interfere with your possession or legal ownership, provided, however, that you use the partnership assets, which have thus come to you, for the payment of the partnership debts, and all of it, if necessary; should all of it be not required, then the balance that may remain in your hands belongs equally to you and to the personal representative of the deceased. But it is not until after the debts have been ascertained and paid, and the accounts balanced, that the personal representatives of the deceased have any rights in the personality.

In disposing of the personal property, it is your privilege to dispose of it in any way that you think is for the best interests of the estate; you can sell it at auction or at private sale, in fact, you could dispose of all the property by general assignment, for the benefit of creditors, if you found the firm insolvent. The representatives of the deceased partner have no right to interfere in the matter, so long as you are applying the assets of the partnership to partnership debts, even in your own way.

In regard to the outstanding contracts, as a general rule (and unless there are some extraordinary circumstances which you have not mentioned to me), it is your duty not to sell these partially performed contracts, but to proceed to perform them and receive whatever profit can be made out of the same, and then to divide the profits equally between yourself and the representative of the deceased.

You are not entitled to any compensation for so doing, and although this may seem to you inequitable, if you had predeceased your partner, he would have had to do the same.

In regard to such contracts as hiring, or for services, as exist between the employees of the firm and yourself, these were terminated by the dissolution of the partnership, which occurred upon the death of your partner, and it would be wise to make new arrangements at once with such of the employees of the old concern as you desire to retain in your employ. Business expediency may dictate that you do not bring this matter to their attention at the present time.

You should at once notify all persons with whom you are insured of the death of your deceased partner.

Your lease is not terminated by the death of your partner, and you will be obliged to look out for this obligation. If it is more valuable than when it was made, you can dispose of it as

Advice to Surviving Partner

an asset; on the other hand, if it is not as valuable as when made, which I understand to be the fact, you should try and make arrangements with the landlord either for a surrender or cancellation.

In regard to the name of the old partnership, unless the good will of the firm is sold, the firm name remains with you, as survivor, subject, of course, to any qualifications of this principle in the articles of co-partnership, and subject, also, to the restrictions imposed by the statute on the use of firm names representing persons not partners; in other words, you have the right to continue the use of the name by complying with statute of the State, to wit, filing of proper papers drawn and executed under the advice of counsel. The books and evidences of debt remain with you, as surviving partner.

It should be borne in mind that in winding up a firm's affairs, and distributing the assets, the value of its good will is almost entirely destroyed; moreover, unless the business is continued without interruption, the earning capacity of the firm as a going concern is destroyed; both of these things are often of considerable value.

We would suggest, in order to preserve them, that you consider the advisability of buying out the interest of your deceased partner. For that purpose, you should have the representatives of his estate assist you in determining the value of the assets, *i. e.*, stock, outstanding contracts, etc., and also have the liabilities of the firm ascertained. An appraisement should then be made of the value of the interest of the deceased partner, and upon this basis you can purchase his interest.

Of course, the appraised valuation will determine very largely what price you should offer; at the same time, there is nothing to prevent the estate of your deceased partner from refusing your offer, should they deem it insufficient.

If this plan is followed, you would keep the firm going, take new business, and avoid the very serious loss that always occurs when a partnership is wound up.

In the event of the failure of the representatives of your deceased partner and yourself agreeing upon terms, or if you are desirous that the business be continued with them in it, we would suggest for your consideration the formation of a stock company to continue it.

Advice to Surviving Partner

If old firm name is to be continued comply with provisions of Partnership Law as to continuance of firm name. See p. 1140.

These instructions are of the most general character, and if further information concerning your particular estate is desired, we should be pleased to advise you.

X

LETTER TO WIDOW WITH CHILDREN AS TO HER RIGHTS IN PROPERTY OF DECEASED HUSBAND

New York, *January 5, 1916.*

Dear Madam:

Replying to your inquiry as to your rights in your husband's property, he having died *leaving no will*, we beg to advise you in a general way as follows:

Your only interest in your husband's *real* estate is a dower right; that is, you have the right during your life to use or to receive the income from one-third of his real estate. The property itself will be divided equally among his children subject to your right of dower.

Concerning such real estate as was transferred to you and your husband together, it will be necessary to ascertain the exact wording of the deed. If "to James Wilson and his wife, Mary," then you become the sole owner, because it is, as called in the language of the law, a "tenancy by the entirety"; on the other hand, if "to James Wilson and his wife, Mary, as joint tenants," the same is true, but if it is "to James Wilson and his wife, Mary, as tenants in common," then one-half will go to you and the other half will be divided equally among the children subject to your dower.

The personal property, after the payment of your husband's debts and the expenses of the administration of the estate, will go to you and his children; you receiving one-third, and the remaining two-thirds being equally divided among the children. You are entitled to remain in the home (chief house) owned by your husband, for forty days, rent free, and you may claim reasonable sustenance out of the estate during this period. You may also be entitled to certain household and personal effects, etc., of your husband not exceeding in value \$600. You are also entitled to \$150 in cash over and above your share in the estate.

You have a prior right to appointment as administratrix of your husband's estate, and should apply for such letters promptly. You should notify any insurance companies or associations in

To Widow — With Children

which your husband was insured, of his death, using for that purpose the blank form which they will furnish you on application.

More detailed information as to your rights and duties as administratrix will be given when you are ready to apply for letters of administration.

Yours very truly,

.....

XI

LETTER TO WIDOWER AS TO HIS RIGHTS IN PROPERTY OF DECEASED WIFE

New York, January 5, 1916.

Dear Sir:

Replying to your inquiry as to your rights in your wife's property, she having died *leaving no will*, in a general way we would advise you as follows:

Your wife's *real property* will be equally divided among her children, subject, however, to your right of courtesy. Since there are children born of this marriage, the law gives you the right to the use of all your wife's real property during your life (your courtesy), but you have no further interest in the real property.

The *personal property*, after the payment of the debts of your wife and the expenses of the administration of the estate, will go to yourself and her children, one-third to you and two-thirds to be equally divided among them.* You are entitled to remain in the home (chief house) owned by your wife for forty days, rent free, and you may claim reasonable sustenance out of the estate during this period. You may also be entitled to certain household and personal effects, etc., of your wife not exceeding in value \$600. You are also entitled to \$150 in cash over and above your share in the estate.

You have a prior right to letters of administration upon your wife's estate and should apply for such letters promptly. You should also notify any companies or associations in which your wife was insured, of her death, using for that purpose the blanks which they will furnish upon application. As soon as you are appointed administrator it will be your duty to take possession of all your wife's personal property and proceed to convert the same into money and apply it to the payment of her debts.

We will advise you more fully as to your rights and duties as administrator as soon as you are appointed.

Yours very truly,

.....

*If no children husband takes all the personal property.

XII

NOTICE TO BE GIVEN BY MORTGAGOR, (WHO HAS PARTED WITH TITLE), TO OWNER OF MORTGAGE, TO FORECLOSE

Date, (*October 4, 1915.*)

To (*Franklin Irwin,*) Mortgagee,
(or holder of mortgage on premises No. 71 *West 70th*
Street, N. Y. City.)

Please take notice that the principal of the bond and mortgage covering premises (*give description or street number*) made by the undersigned and dated (*March 3, 1914*) has become due, and that unless you proceed forthwith, to collect the same either from the present owner of the said property, or out of the said premises covered by said mortgage, by foreclosure and sale of said premises, the undersigned, the maker of said bond and mortgage will not be liable for any deficiency which may hereafter arise by reason of your delay, in proceeding to realize upon such security at the present time, in accordance with the provisions of said bond and mortgage.

(*JAMES F. THOMPSON,*)

(See *Gottschalk v. Jungmann*, 78 App. Div. 171.)

[200]

PART IV
TITLE CLOSING



PART IV

TITLE CLOSING

I

MEMORANDUM FOR CLOSING

When Acting for Vendor

The ideal closing should consist merely of delivery of the necessary documents by the vendor, and the consideration by the vendee.

A perusal of the following hints may prove an aid to the closer in seeing that as many of them as are pertinent to the transaction in hand are attended to before or at the closing and are not overlooked.

Have abstract of title or policy of title insurance or both.

Will proof be needed that vendor is a citizen of full age, competent and unmarried?

Prepare deed and compare description, which should be same as last deed, unless change has taken place in street name or line. Full consideration should be expressed in deed by person conveying in representative capacity unless both grantor and grantee unite in a duly acknowledged certificate showing what the real consideration is, in which case the consideration may be expressed nominally. See that it complies strictly with contract to sell.

Have special clauses provided for in contract of sale been inserted in the deed?

If mortgages on premises, is deed to read "subject to mortgages" or are the mortgages to be "assumed by" purchaser in the deed?

Signature of vendor and vendor's wife, acknowledgment of vendor and vendor's wife.

Has notary complied with requirements of Register's office?

Will it be necessary to show that vendor's wife is of full age and competent?

If vendor, a corporation, have certified copy of resolution authorizing sale and conveyance.

Vendor

If deed executed outside of the county, have county clerk's certificate attached.

Inquire whether vendor has married since signing contract of sale.

Ascertain whether any of the parties have been divorced.

BE PREPARED WITH THE FOLLOWING:

Tax, water and assessment bills receipted with interest computed to day after closing and memorandum for apportionment.

Reading of water meter as of day of closing.

Transcripts of judgments.

Certificate of satisfaction of judgments.

Assignments of judgments (if any to be drawn).

Satisfaction of mortgages (if any to be drawn), and arrange to have bond and mortgage in readiness for closing.

Cancellation of chattel mortgages or conditional bill of sale affecting fixtures.

Receipts for last payment of interest on mortgages.

Estoppel certificates from mortgagee, showing amount due, and date of last payment of interest or principal, properly executed for recording.

Memorandum for apportionment of interest on mortgages.

Subordination agreement if called for in contract.

If there are mechanics' liens, have satisfaction pieces.

Consents and orders cancelling *lis pendens*, if any.

Insurance policies and premium bills, fire, plate glass and casualty, and memorandum for apportionment. Casualty policies should be assigned.

Authorization to vendee to pay taxes, assessment, water bills, judgments and mechanics' and other liens (if any to be allowed).

Assignment of awards.

List of rents paid and unpaid, and assignment of unpaid rents.

Assignments of leases.

Receipt for last payment of rent and memorandum for apportionment of same. Inquire whether any rent has been paid to vendor in advance.

Letters to tenants to pay rent to vendee.

Vendor

Affidavit of title as to ownership, citizenship, age, marriage identity of wife, judgments, etc.

Powers of attorney, if agent acts for vendor on closing, and proof that principal is alive and that power has not been revoked.

Bill of sale of household articles, if any to be drawn: Shovels, pulleys, tools, brooms, mops, pails, gas fixtures and globes, electric light bulbs, ash cans, keys. Furnishings: Carpets, shades, awnings, hat racks, grills, hall seats, window seats, mirrors, heating apparatus.

Contract of sale.

Last deed of premises.

You may need other old deeds and papers.

Bill for client for services.

THE FOLLOWING MATTERS MAY NEED ATTENTION:

Are there any chattel mortgages on material or fixtures or any such purchased by conditional sale?

Examine leases and assignments of leases, and ask if any deposits have been made by tenants or security for rent given.

Inquire whether there are any restrictions in the title.

Inquire who is in possession, nature and extent of his tenancy; any open and notorious easements; are there any overhanging eaves or shutters?

Any beams of adjoining property in walls, or *vice versa*.

Any foundation extensions, easements, party wall agreements, sewer and drain rights. Unsafe building liens.

Agreements for power from adjoining premises.

Have tenement-house, fire, health, building, labor and other department violations been removed?

Examine vault space permits.

Look out for survey variations.

How old is building, and compare date with survey?

For what purposes premises are used. (§ 42, Liquor Tax Law; U. S. Distillery Laws, etc.)

If partially constructed building on premises see that union workmen and members of any Building Trades Association have been paid.

Inquire as to age of children of previous owners to see if any born after making of will.

Inquire as to posthumous children.

Vendor

If property acquired from a deceased person within three years; if so, have all debts of deceased been paid?

Have inheritance taxes been paid?

Inquire if there are any proposed widenings of streets.

Has any change taken place in street lines or names?

Has any change in condemnation or assessments situation taken place since the making of the contract?

Provide for adjustment of rights against abutting railroad, elevated, subway, or surface.

Charge your client with the accrued interest on any mortgage, with rents collected and collect from purchaser the value of the fire and other insurance prepaid, gas range rents and similar charges, collect for drawing purchase money bonds and mortgages and the expense of recording same.

In regard to any fire or other insurance policies be prepared with proof that the premiums have been paid and that the policies are in force.

Arrange for agreements with telephone, telegraph companies, and leases for sign boards.

Adjust charge and liability for electric light, gas, gas ranges, steam and power service, and deposits for same.

Give attention to the following items: Wages of janitor, elevator operator, hall boys, and other employees.

Don't forget charge for recording deeds, satisfaction pieces, releases, and any other papers (satisfaction pieces, \$2.50 each), and collect for drawing purchase-money mortgage and recording same.

Mortgage recording tax.

Remember it is dangerous to take checks (even when certified) with indorsements of third parties thereon. See *Ward v. City Trust Co.*, 192 N. Y. 61.

Inquire who is to pay brokerage and amount.

If purchase money mortgage to be taken back, see that release clause is favorable to mortgagee. (See Memorandum as to Mortgages, p. 18.)

If allowance is made for unpaid taxes and your client takes back a purchase money mortgage, see that the money allowed is applied toward the actual reduction of the tax liens.

Taxes in New York City become a lien first half on first day of May and second half on first day of November in each year. (Laws 1916, ch. 17.)

II

MEMORANDUM FOR CLOSING

When Acting for Vendee

The ideal title closing should consist merely of the delivery of necessary documents by the vendor and of the consideration by the vendee. A perusal of the following hints may prove an aid to the closer in seeing that as many of them as are pertinent to the transaction in hand are attended to before or at the closing and are not overlooked.

Full consideration should be expressed in deed by person conveying in representative capacity unless both grantor and grantee unite in a duly acknowledged certificate showing what the real consideration is, in which case the consideration may be expressed nominally.

Are the special clauses provided for in contract of sale in the deed?

If mortgages on premises, does deed read "subject to them," or does vendee "assume" same?

Is vendor a citizen of full age and competent or previously married?

Signature of vendor and vendor's wife.

Is vendor's wife of full age and competent?

Acknowledgment by parties.

Has notary complied with requirements of Register's office?

Is deed sealed?

If vendor a corporation, obtain certified copy of resolution authorizing sale and conveyance.

If deed executed outside of county, see that county clerk's certificate is attached.

Has vendor married since signing contract of sale?

Have any of the parties been divorced?

Be careful taking a deed to vendee "as trustee."

OBTAIN OR CHECK THE FOLLOWING:

Abstract showing clear title, or policy of title insurance, or both. Examine and approve deed, full covenant and warranty. Compare description, which should convey as much as owner has and not less than that called for by contract. Same description as in last deed usually

Vendee

preferred unless there has been change in street names and lines.

Tax, water and assessment bills with interest computed to day after closing and memorandum for apportionment.

Has water meter been read as of day of closing?

List of judgments unsatisfied and transcripts of same.

Assignments of judgments (if any to be delivered).

Satisfaction of judgments (if any to be delivered).

List of mortgages unsatisfied.

Assignments of mortgages (if any to be delivered).

Satisfaction of mortgages, and obtain bond and mortgages in hand before closing.

Receipts for last payment of interest on mortgages.

Estoppel certificates from mortgagees, showing amount due and date of last payment of interest or principal, properly executed for recording.

Subordination agreement if called for in contract.

Memorandum for apportionment of interest on mortgages.

Satisfaction pieces of mechanics' liens (if any to be delivered).

Consents and orders cancelling *lis pendens* (if any to be delivered).

Obtain insurance policies and premium bills, fire, plate glass and casualty and memorandum for apportionment.

Obtain assignments of casualty policies.

Get details to have policies changed at once.

Obtain authorization to receive money if vendee not present at closing.

Determine amount necessary to pay unpaid taxes, assessments, water rates, judgments, mechanics' liens and other charges to be allowed.

Obtain authorization to pay taxes, assessments, water rates, judgments and mechanics' and other liens.

Obtain assignment of awards.

List of rents paid and unpaid and assignment of rents unpaid, and if any deposits or security held by vendor obtain same.

Receipt for last payment of rent and memorandum for apportionment of rents. Inquire whether any rent or deposits have been paid to vendor in advance.

Vendee

- Obtain letters to tenants to pay rent to vendee, and list of tenants.
- Affidavit of title as to ownership, citizenship, age, marriage, identity of wife, judgments, etc.
- If agent acts for vendor, get power of attorney properly executed for recording and proof that vendor is alive, and that power has not been revoked.
- Get bill of sale of household articles (if any to be delivered): Shovels, pulleys, tools, brooms, mops, pails, gas fixtures and globes, electric light bulbs, ash cans, keys. Furnishings: Carpets, shades, awnings, hat racks, grills, hall seats, mirrors, heating apparatus.
- Have contract of sale.
- Obtain last deed to premises and old deeds.
- See that there are no chattel mortgages on materials or fixtures, or any materials in premises purchased on conditional sale.
- Examine leases and assignments of leases.
- Not later than the day before closing of title, inspect premises and inquire who is in possession, nature and extent of tenancy, and whether person in possession claims any easements.
- Any open or notorious easements; are there any overhanging eaves or shutters.
- Look out for beams of adjoining property in walls or *vice versa*.
- Foundation extension, easements and party-wall agreements, sewer and drain rights. Unsafe building liens. Power agreements.
- Have tenement house, fire, health, building, labor and other department violations been removed? If not, secure deposit to cover estimated cost of removal.
- Examine vault space permits.
- Look out for survey variations.
- How old is building and compare date with survey; any building erected since survey made?
- For what purposes are premises used? (§ 42, Liquor Tax Law; U. S. Distillery Laws, etc.)
- If partially constructed building on premises, see that union workmen have been paid; also workmen of any member of Building Trades Association have been paid.

Vendee

If property acquired through will, inquire as to age of children of previous owners to see if any born after making of will.

Inquire as to posthumous children.

Inquire if property acquired from a deceased person within three years; if so, have all his debts been paid?

Has inheritance tax been paid?

Inquire if there are any proposed widenings of streets.

Has any change taken place in street lines or names?

Any change taken place in condemnation or assessment situation?

Provide for adjustment of rights against abutting railroads, surface, elevated or subway.

Collect the accrued interest on any mortgage, with rents collected, and pay to vendor the value of the fire and other insurance prepaid, gas range rents and similar charges, pay for drawing purchase money bonds and mortgages and the expense of recording same.

Do not pay for any fire or other insurance policies unless proof has been submitted to you that the premiums have been paid and that the policies are in force.

Arrange for agreements with telephone, telegraph companies and leases of sign boards (if any).

Adjust charge and liability for electric light, gas, gas ranges, steam and power service, and arrange as to deposits with such companies.

Give attention to the following items: Wages of janitor, elevator operators, hall boys, and other employees.

Don't forget charge for recording deeds, satisfaction pieces, releases, and any other papers. (Satisfaction pieces, \$2.50 each.)

Look out for mortgage tax.

Who is to pay brokerage and amount?

If purchase-money mortgage to be given back, see memorandum of mortgages, page 18.

Have certified check to order of self, and if vendor not present obtain authorization of agent to receive money.

Bill for searching and services.

Taxes in New York City become a lien, first half on the first day of May, and second half on the first day of November. (Laws 1916, ch. 17.)

Vendee

AFTER CLOSING:

Record papers.

Have insurance policies changed at once.

Notify tenants of change of ownership and that rent is to
paid to vendee.

Notify mortgagees of new ownership.

Comply with § 140, Tenement House Law.

III

MEMORANDUM FOR CLOSING

When Acting for Mortgagor

The ideal closing should consist merely of delivery of the necessary documents by the mortgagor and of the consideration by the mortgagee.

A perusal of the following hints may prove an aid to the closer in seeing that as many of them as are pertinent to the transaction in hand are attended to before or at the closing and are not overlooked.

Prepare bond.

Prepare mortgage to be executed by mortgagor and wife; acknowledged and sealed by mortgagor and wife, and see that it complies strictly with contract.

Has notary complied with requirements of register's office?

Are mortgagor and wife citizens and of full age and competent? Has mortgagor been previously married?

If documents executed outside of the county, have county clerk's certificate attached.

Compare description. Should be same as last deed unless change has taken place in street name or line.

If mortgagor, a corporation, have certified copy of resolution authorizing mortgage and proof of consent of stockholders or authority of court if needed.

Has mortgagor married recently?

Ascertain whether any of the parties have been divorced.

Have special clauses been inserted in mortgage, *e. g.*, is default clause to be on demand, sixty days, or ninety days; gold clause; payment of future tax, receiver clause; allowing part payments; allowing payments before maturity; releasing clause; violation clause; provisions as to indorsements on bond and production of same when payments made; making second mortgage due upon default in any payment of interest for ten days on any prior mortgage; making interest, taxes, assessments or other charges paid by mortgagees upon mortgagor's default, part of the principal secured by the mortgage; subordination clause.

If mortgagor desires to sell off portion of mortgaged premises see that mortgage contains clause enabling mortgagor to sell lots from time to time by payment of a proportionate

Mortgagor

part of the lien of the mortgage on each block, lot or parcel generally one-third more than the lien of the mortgage, and provide who shall pay for the release and amount thereof. Is this a purchase-money mortgage?
Submit bond and mortgage to attorney for mortgagee and have same approved.

BE PREPARED WITH THE FOLLOWING:

Deed to mortgagor.
Abstract showing clear title or policy of title insurance, or both.
Tax, water and assessment bills receipted.
Water meter reading as of day of closing.
Transcripts of judgments against mortgagor.
Assignments of judgments, if any to be drawn.
Satisfaction pieces of judgments, if any to be drawn.
List of mortgages.
Assignments of mortgages, if any to be drawn.
Satisfaction of mortgages, if any to be drawn, and arrange to have the bonds and mortgages satisfied at the closing.
Receipts for last payment of interest on prior mortgages.
Estoppel certificates from mortgagees showing amount due and date of last payment of interest or principal properly executed for recording.
Subordination agreement, if any to be drawn.
Satisfaction pieces of mechanics' liens, if any.
Consents and order canceling *lis pendens*, if any to be drawn.
Insurance policies and premium bills.
Receipt for insurance policies.
Details so that mortgagee can have bills changed at once.
Authorization to mortgagee to pay taxes, assessments, water bills, judgments and mechanic and other liens, if they are to be reserved on closing.
Assignment of awards, if any to be given.
List of rents paid and unpaid.
Inquire whether any rent has been paid to mortgagor in advance.
Affidavit of title as to ownership, citizenship, age, marriage, identity of wife, judgments, etc.

Mortgagor

If agent to act for mortgagor under power of attorney on closing, have proof that principal is alive and that power has not been revoked.

Bill for client for services.

THE FOLLOWING MATTERS MAY NEED ATTENTION:

Are there any chattel mortgages and material or fixtures, or any such purchased by conditional sale?

Examine leases and assignments of leases, and clauses subordinating them to future mortgages, if any.

Inquire whether there are any restrictions in the title.

Inquire who is in possession, nature and extent of his tenancy.

Are there any open or notorious easements?

Are there any overhanging eaves or shutters?

Are there any beams of adjoining property in walls or *vice versa*?

Any foundation extensions, easements, party wall agreements, sewer or drain rights, unsafe building liens, agreements for power from adjoining premises?

Have tenement-house, fire, health, building, labor and other department violations been removed?

Look into vault space permits.

Look out for survey variations.

How old is building? Compare date with survey.

For what purpose premises used? (§ 42, Liquor Tax Law; U. S. Distillery Laws, etc.)

Have any new buildings been erected since survey?

If any partially constructed building, see that union workmen have been paid; also members of any Building Trades Associations.

Has any change taken place in street lines or names?

Any proposed widening of streets?

Has any change in condemnation or assessment situation taken place since the beginning of negotiations?

Is any security other than bond to be given?

Inquire as to age of children of previous owners to see if any born after making of will of such owner.

Look out for posthumous children.

If property obtained from a deceased person within three years, have all debts of the deceased been paid?

Mortgagor

Has collateral inheritance tax been paid?

Don't forget charge for recording mortgages, satisfaction pieces, releases and other papers. (Satisfaction pieces, \$2.50 each.)

Prepare for mortgage recording tax.

Remember it is dangerous to take check, even when certified, with indorsements of third parties thereon.

Who is to pay brokerage and amount?

Taxes in New York City become a lien, the first half on the first day of May and the second half on the first day of November. (Laws 1916, chap. 17.)

It is not wise to pay off any part of principal of a bond without having a receipt indorsed on the bond itself. Sometimes by the terms of the bond such indorsements must be made and the borrower is entitled to require a production of the bond and to see the indorsements made.

MORTGAGOR RECEIVES:

Check or money. But see *Ward v. City Trust Co.*, 192 N. Y. 61.

Receipt for money retained.

Receipt for insurance policies and other papers delivered.

IV

MEMORANDUM FOR CLOSING

When Acting for Mortgagee

The ideal closing should consist merely of delivery of the necessary documents by the mortgagor and payment of the consideration by the mortgagee.

A perusal of the following hints may prove an aid to the closer in seeing that as many of them as are pertinent to the transaction in hand are attended to before or at the closing and are not overlooked.

Approve bond and mortgage.

Signature and acknowledgment of mortgagor and wife.

Has notary signed in register's office?

Are mortgagor and wife citizens of full age and competent?

Has mortgagor previously married?

Bond and mortgage sealed.

If executed outside of the county, is county clerk's certificate attached?

Compare description: Should be same as last deed unless change has taken place in street, name or line.

If mortgagor a corporation, obtain copy of resolution of directors authorizing same and consent of stockholders, if necessary, and proof that all requirements of Corporation Law have been complied with.

Has mortgagor married since signing contract?

Have any of the parties been divorced?

Have special clauses been inserted, *e. g.*: Is default clause to be, on demand, sixty days, or ninety days; gold clause; payment of future tax; receiver clause; allowing part payments; allowing payments before maturity; releasing clause; violation clause; provisions as to indorsements on bond and production of same upon payments made; making second mortgage due upon default in any payment of interest for ten days on any prior mortgage; making interest, taxes, assessments or other charges paid by mortgagee upon mortgagor's default, part of the principal secured by the mortgage; subordination clause; if release clause, see that it is favorable to mortgagee and provide

Mortgagee

who shall pay for drawing release and amount and terms, etc.

Is this a purchase-money mortgage?

CHECK OR RECEIVE THE FOLLOWING:

Abstract showing clear title; or policy of title insurance, or both.

Deed to mortgagor.

Obtain unpaid tax, water and assessment bills with interest computed to day after closing.

Have water meter read as of day of closing.

Transcripts of judgments against mortgagor.

Assignments of judgments, if any to be delivered.

Satisfaction pieces of judgments, if any to be delivered.

List of mortgages, amounts thereof and terms.

Assignment of mortgages, if any to be delivered.

Satisfaction of mortgages, if any to be delivered, and have the bond and mortgage in hand before closing.

Receipts for last payment of interest on prior mortgages.

Estoppel certificates of mortgagees showing amount due and date of last payment of interest or principal properly executed for recording.

Subordination agreement, if any to be delivered.

Satisfaction pieces of mechanics' liens, if any to be delivered.

Consents and orders canceling *lis pendens*, if any to be delivered.

Insurance policies and premium bills.

Receipt for insurance policies.

Details so that mortgagee can have policies changed at once.

Ascertain amount necessary to cover unpaid taxes, assessments, water bills, judgments, mechanics' liens and other liens and charges including interest and penalties to date of closing to be reserved on closing.

Authorization to mortgagee to pay taxes, assessments, water bills, judgments and mechanic and other liens, if they are to be reserved on closing.

Assignment of awards, if any to be delivered.

List of rents paid and unpaid.

Inquire whether any rent has been paid to mortgagor in advance.

Mortgagee

Affidavit of title as to ownership, citizenship, age, marriage, identity of wife, judgments, etc.

Examine powers of attorney, if agent to act for mortgagor on closing and proof that principal is alive, and that power has not been revoked.

THE FOLLOWING MATTERS MAY NEED ATTENTION:

Are there any chattel mortgages on material or fixtures or any such purchased by conditional sale?

Examine leases and assignment of leases and clauses subordinating them to future mortgages, if any.

Are there any restrictions in the title?

Not later than the day before the closing, inspect premises and inquire who is in possession, nature and extent of his tenancy, and if party in possession claims any easements.

If premises leased, inquire whether any lessees have paid deposits to apply on rent of last month of term.

Are there any open or notorious easements?

Are there any overhanging eaves or shutters?

Are there any beams of adjoining property in walls or *vice versa*?

Any foundation extensions, easements, party wall agreements, sewer or drain rights, unsafe building liens, agreements for power from adjoining premises?

Have tenement house, fire, health, building, labor and other department violations been removed?

Look into vault space permits.

Look out for survey variations.

How old is building, and compare date with survey.

For what purpose premises are used? (§ 42, Liquor Tax Law; U. S. Distillery Laws, etc.)

Have any new buildings been erected since survey?

If any partially constructed building, see that union workmen have been paid; also members of any Building Trades Associations.

Has any change in condemnation or easements situation taken place since the beginning of negotiations?

Is any security other than bond to be given?

Inquire as to age of children of previous owners to see if any born after making of will of such owner.

Look out for posthumous children.

Mortgagee

Inquire if property obtained from a deceased person within three years; if so have all debts of the deceased been paid?

Has inheritance tax been paid?

Don't forget charge for recording mortgage, satisfaction pieces, releases and other papers. (Satisfaction pieces, \$2.50 each.)

Look out for mortgage recording tax.

Remember it is dangerous to take check (even when certified) with indorsements of third parties thereon.

Who is to pay brokerage and amount?

Taxes in New York City become a lien, first half on the first of May and second half on the first of November. (Laws 1916, chap. 17.)

It is not wise to pay off any part of principal of a bond without having a receipt indorsed on the bond itself.

Sometimes by the terms of the bond such indorsements must be made and the borrower is entitled to require a production of the bond and to see the indorsements made.

Have certified check payable to self.

Bill for mortgagor for searching.

AFTER CLOSING:

Record papers.

Have insurance policies changed at once.

If allowance is made for unpaid taxes and your client takes back a purchase-money mortgage, see that the money allowed is applied towards the actual reduction of the tax liens.

PART V
COMMON PRACTICE FORMS
[219]

PART V

COMMON PRACTICE FORMS

ATTACHMENT

FORM No. 4

Warrant of Attachment

THE PEOPLE OF THE STATE OF NEW YORK.

To the Sheriff of the County of (*New York*,) Greeting:

WHEREAS, an application has been made to the judge granting this warrant by (*William Brown and George W. Davis*), plaintiffs, for a warrant of attachment against the property of (*John T. Taylor, Henry Johnson, and Charles W. Clark*), defendants, in an action in the (*City*) Court of (*the City of New York*), and it appearing by affidavit to the satisfaction of the judge granting this warrant that one of the causes of action specified in section 635 of the Code of Civil Procedure exists against the defendants to recover a sum of money only over and above all counterclaims known to the plaintiff, to wit; the sum of (*eight hundred and ninety-four* [\$894]) dollars as damages for breach of contract in (*the non-payment of the purchase price of goods sold and delivered*), and the affidavit showing that *the defendants have disposed of their property with intent to defraud their creditors*, and the plaintiffs having also given the undertaking required by law;

NOW YOU ARE HEREBY COMMANDED, to attach and safely keep so much of the property within your county which the defendants (*John T. Taylor, Henry Johnson, and Charles W. Clark*) have, or which they may have at any time before final judgment in the action, as will satisfy plaintiffs' demand of (*eight hundred and ninety-four* [\$894]) dollars, together with costs and expenses, and that you proceed hereon in the manner required of you by law.

Undertaking

WITNESS*: Hon. (*Edward F. O'Dwyer, Chief*) Justice of the (*City*) Court (*of the City of New York*), at (*its court house, No. 32 Chambers street*) in (*the Borough of Manhattan*), City of (*New York*), this (*24th*) day of (*July*), in the year one thousand nine hundred and (*fifteen*).

(*EDWARD F. O'DWYER*),
(*Chief Justice, City Court*
of the City of New York.)

(*VICTOR ROGERS*),
Plaintiffs' Attorney,
(*27 Pine*) street,
(*New York City*).

FORM No. 5

Plaintiff's Undertaking on Attachment

SUPREME COURT,
(*New York*) County.

(*JOHN OLIVER and FRANKLIN*
OLIVER,)

Plaintiffs,

against

(*LEONARD CALDWELL,*)

Défendant.

The above-named plaintiffs having applied to one of the justices of this court for a warrant of attachment against the property of the above-named defendant under and by virtue of the Code of Civil Procedure, we, (*John Lambert*), of No. (*418 Central Park West, in the Borough of Manhattan*), City of (*New York*), and (*Arthur Stevens*), of No. (*402 Washington avenue, in the Borough of Brooklyn*), City of (*New York*), do hereby jointly and severally undertake that if the defendant recovers judgment in this action, or if the warrant of attachment is vacated, plaintiffs above named will pay all costs that may be awarded to the above-named defendant, and all damages which the said defendants may sustain

* In the Supreme Court, First Judicial District usually attested in the name of the Justice sitting at Special Term, Part II.

Undertaking

by reason of the said attachment, not exceeding the sum of (*two hundred and fifty dollars*).

Dated (*July 1, 1915*.)

(*JOHN LAMBERT.*)

(*ARTHUR STEVENS.*)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*John Lambert*), being duly sworn, says: That he is a resident and a (*freeholder*) within the State of New York, and is worth double the sum specified in the above undertaking over and above all debts and liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution.

(*JOHN LAMBERT.*)

Sworn to before me this (*1st*)
day of (*July, 1915*).

(*JOHN JONES*),

Notary Public (*N. Y.*) County.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*ARTHUR STEVENS*), being sworn, says, that he is a resident and a (*householder*) within the State of New York, and worth double the sum specified in the above undertaking, over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

(*ARTHUR STEVENS.*)

Sworn to before me this (*1st*) }
day of (*July, 1915*). }

(*JOHN JONES*),

Notary Public (*N. Y.*) Co.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

I certify that on this (*first*) day of (*July, 1915*), before me personally appeared (*John Lambert and Arthur Stevens*) to me known and known to me to be the persons described in and who executed the foregoing undertaking, and severally duly acknowledged to me that they executed the same.

(*JOHN JONES*),

Notary Public,

(*New York*) County.

AN AFFIDAVIT TO OBTAIN AN ATTACHMENT SHOULD SHOW IN SUBSTANCE:

1. That the cause of action is one of those specified in section 635 of the Code of Civil Procedure, arising out of the following facts; (here set forth *proof* of facts stated in complaint.)
2. If the action is to recover damages for breach of contract, that the plaintiff is entitled to recover the sum stated over and above all counterclaims known to him.
3. The ground of attachment.
In actions in the City Court of the City of New York, bear in mind that apparently § 636, Code, does not apply. See § 3169, Code, and 56 *Misc.* 121.
4. That the action has been commenced, or the summons issued and a copy annexed, and that the warrant is asked for to accompany the summons.
5. That no previous application has been made.

Where cables, telegrams, letters, and other documents received are the grounds of deponent's belief, and the sources of his information, they should not only be referred to, but copies should be annexed to the papers, and a statement of deponent's possession and readiness to produce the original should be made. The mere averment of facts as upon personal knowledge is not sufficient unless circumstances are stated from which the inference can fairly be drawn that affiant has personal knowledge of the facts which he avers, and where it is assumed that he has not personal knowledge, as for example: Where he is assignee of a claim and does not disclose means of knowledge, the papers will be deemed insufficient; in other words, where the affiant, owing to his relations with the parties and to the cause of action, plainly speaks as an actor in the action, the courts usually accept his verified averment of facts, which may have come within his actual observation or personal action as satisfactory proof thereof; where, however, he does not speak as such a direct actor, but, *in fact*, speaks *apparently* as a stranger to the transaction, it matters not how positively, he asserts his personal knowledge of the facts averred, he must still furnish the evidence of such facts. Affidavits taken before a notary outside of the State will be disregarded unless a certificate as to the official character and genuineness of the signature of the notary is attached.

What Must be Shown

In stating conversations received over the telephone, he must show all the circumstances which prove that he knew the person speaking at the other end, as for example, that he called up that person, that he knew the voice of the person speaking, having often heard it before over the telephone, and any other fact which proves that he knew the person to whom he was talking.

In an action against a foreign corporation read carefully § 1780, Code, and case of *Landenberg v. Commercial Bank*, 87 *Hun*, 269; see 166 *App. Div.* 64. The fact that plaintiff is a resident of the State or a domestic corporation should be alleged both in the complaint and affidavit. If the action is brought by or against a foreign corporation, jurisdictional facts should be set forth in both the complaint and the affidavit. (§§ 1779-1780, Code.) See *Bagdon v. Reading C. & I. Co.*, 217, *N. Y.* 432. As to the cause of action, see 206 *N. Y.* 506. Since the amendment of 1911, § 768, Code, defects or insufficiencies in the papers or proceedings may be cured or supplied *nunc pro tunc*, awarding costs in favor of the adverse party. (*Cutler v. Allavena*, 165 *App. Div.* 422.) But prior to 1911, it was held that the Court had no power to permit the amendment of an affidavit upon which a warrant of attachment was issued for the purpose of supplying defects that related to matters to jurisdiction, though it might permit an amendment of the affidavits so far as they related to the substance of the plaintiff's claim. (60 *Misc.* 547.) Whether the amendment of 1911 would permit the curing of defects as to jurisdictional matters is very doubtful. As to proving non-residence, see 58 *Misc.* 319.

There is a strong tendency in late decisions to require very specific evidentiary facts to appear in the affidavit showing the right to recover specific damages. (See cases cited in 78 *Misc.* 498; 168 *App. Div.* 60; 136 *App. Div.* 142.)

In action on an assigned claim it is sufficient to state that the plaintiff is entitled to recover the said sum over and above all counterclaims known to him; it is not necessary to show that he is entitled to recover said sum over and above all counterclaims,

See affidavits on application for order of arrest, p. 245.

Ground: Non-Resident Defendant

FORM No. 6

Affidavit to Obtain Attachment — Ground: Non-residence of Defendant

SUPREME COURT,
(*New York*) County.

(HENRY CURTIN,) }
Plaintiff,

against

(WILLIAM MORRIS,) }
Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(HENRY CURTIN), being duly sworn, says, that he is the plaintiff in this action, and resides at (*No. 345 West 89th Street, Borough of Manhattan, City of New York.*) That a cause of action exists in favor of plaintiff and against the above-named defendant for the recovery of a sum of money only, as damages for a breach of contract (express or implied) other than a contract to marry, and that said cause of action arose from and is based upon the following facts:

At the (*City of New York*), on or about the (1st) day of (*July, 1916*), plaintiff sold and delivered to defendant at defendant's special instance and request at prices agreed upon and on a credit of thirty days, certain goods, wares, and merchandise, to wit: 400 cases of wine, amounting, in the aggregate at such agreed prices, to the sum of twenty-five hundred dollars (\$2,500.00). That said term of credit has expired and said sum has not been paid nor any part thereof.

That the plaintiff in this action is entitled to recover from defendant, on said cause of action, said sum of (*twenty-five hundred*) dollars (\$2,500.00) with interest thereon from the (1st) day of (*July, 1916*), over and above all counterclaims known to plaintiff.

That defendant is not a resident of the State of New York, but resides in the (*City of Trenton*) in the State of (*New Jersey*), this fact having been communicated by defendant to deponent in the following conversation held on the (3rd) day of

Ground: Defendant Foreign Corporation

(August, 1916), at the residence of deponent, (No. 345 West 89th Street, Borough of Manhattan, City of New York: Take in conversation). That thereafter deponent visited defendant at his home in (Trenton, New Jersey).*

That plaintiff has commenced this action to recover said sum of (twenty-five hundred) dollars (\$2,500.00) with interest as aforesaid on the said cause of action, and the summons herein, a copy of which is hereto annexed, has been duly issued and the warrant herein is asked for to accompany the summons.

That no previous application has been made for a warrant of attachment herein.

(HENRY CURTIN.)

Sworn to before me, this }
 (5th) day of (August, 1916). }
 (WILLIAM BLACK),
 Notary Public,
 (New York) County, (No. 17).

FORM No. 7

Affidavit to Obtain Attachment — Ground: Defendant a Foreign Corporation†

SUPREME COURT,
 (New York) County.

(HENRY CURTIN,)	} Plaintiff,
against	
(WILLIAM MORRIS COMPANY,)	
Defendant.	

STATE OF NEW YORK, }
 County of (New York), } ss.:

(HENRY CURTIN,) being duly sworn, says:

That he is the plaintiff in the above action and resides at (No. 45 East 67th Street, in the Borough of Manhattan, City, County)

* 58 Misc. 319; 135 App. Div. 779; 152 N. Y. Supp. 739; 70 Misc. 495.

† An attachment against a national banking association prior to judgment, on the ground that it is a foreign corporation is void, under U. S. R. S. 5242. See 128 App. Div. 503; and cases cited.

Ground: Defendant Foreign Corporation

and State of New York; that a cause of action exists in favor of the plaintiff and against the above-named defendant for the recovery of a sum of money only, as damages for a breach of (*express*) contract other than a contract to marry, and that said cause of action arose from and is based upon the following facts:

(*At the City of New York, between the 1st day of June, 1916, and the 15th day of July, 1916, the plaintiff sold and delivered to the defendant, at the special instance and request of the said defendant, and at prices agreed upon, goods, wares, and merchandise amounting in the aggregate, at such agreed prices, to the sum of three thousand (\$3,000) dollars, and the said sum has not been paid nor any part thereof;*)

That the plaintiff in this action is entitled to recover from the said defendant upon the said cause of action the sum of (*three thousand (\$3,000) dollars*) with interest thereon from the (*15th*) day of (*July, 1916,*) over and above all counterclaims known to plaintiff.

That the defendant, the (*WILLIAM MORRIS COMPANY,*) is a foreign corporation, created by and existing under the laws of the State of (*New Jersey*), as appears by the certificate of the Secretary of State of the State of New Jersey hereto attached,* and that the plaintiff has commenced this action to recover the said sum of (*three thousand (\$3,000) dollars*) with interest as aforesaid, upon the above cause of action and the summons herein, a copy of which is hereto annexed, has been duly issued and the warrant is asked for herein to accompany the same; that no previous application has been made for a warrant of attachment herein.

(*HENRY CURTIN.*)

Sworn to before me, this }
(*11th*) day of (*August, 1916.*) }

(*WILLIAM BLACK,*)

Notary Public,

(*New York*) County (*No. 17.*)

In an action against a foreign corporation, read carefully § 1780, Code, and case of *Ladenburg v. Commercial Bank*, 87 Hun, 269; *Bagdon v. Reading C. & I. Co.*, 217 N. Y. 432.

If plaintiff is a resident of the State or a domestic corporation, the fact should be alleged in the complaint and affidavit. If the

* 137 App. Div. 857; 77 Misc. 277.

On Papers in Another Action

action is against a foreign corporation, brought by another foreign corporation or a non-resident jurisdictional facts required by § 1780, Code, should be fully set forth. (See note, p. 225.)

FORM No. 8

**Affidavit to Obtain Attachment — By Assignee of Cause of Action.
Attaching Copies of Papers on Which a Warrant Was
Granted Against Same Defendant**

SUPREME COURT,
(*New York*) County.

(*ANDREW BUTT*),

Plaintiff,

against

(*THE COLUMBIA COMPANY*),

Defendant.

STATE OF NEW YORK, } ss.:
County of (*New York*), }

(*ANDREW BUTT*), being duly sworn, deposes and says that he is the plaintiff in the above-entitled action, and is a resident of this State, residing at (*14 Madison Avenue, Borough of Manhattan, City of New York.*) Deponent further says that the defendant is a foreign corporation, incorporated under the laws of the State of (*Minnesota*). (Here prove by facts how deponent knows that defendant is a foreign corporation.) That a cause of action exists in favor of this plaintiff and against the above-named defendant for the recovery of a sum of money only as damages for a breach of an express contract other than a contract to marry and that said cause of action arose from and is based upon the following facts:

That at (*the City of New York*) and between the (3rd) day of (*January 2, 1916*) and (*February 3, 1916,*) (*Charles Dale, Edward Fielder, and George Handy*), doing business under the firm name of (*Dale & Company*) at (*the City of New York*) sold and delivered to the said defendant (*The Columbia Company*), the

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following goods, at the agreed prices hereinafter stated, to wit: on (*January 4*, 3,400 baskets of grapes, making a total of (\$1,200)), which was the price said company promised and agreed to pay for the said grapes, but never has paid for the same or any part thereof, as appears by the affidavit of (*Charles Dale*), verified the (4th) day of (*September*, 1916), hereto attached. The allegations as to the incorporation of the defendant and the allegations following next thereafter are made by this deponent upon information and belief, derived from two affidavits, upon which attachments were issued against the same defendant, both of which affidavits were filed in the office of the Clerk of the County of (*New York*); one made by (*Andrew Brady*), filed on the (10th) day of (*December*, 1915), in an action of (*Brady v. The Columbia Company*), the other made by (*David Coleman*), of which copies are hereto annexed marked respectively A. & B., and such original affidavits are herewith produced for inspection by this Court. Deponent further says that the cause of action hereinbefore set forth has been assigned to this deponent, and deponent is now the lawful owner and holder thereof and was such when this action was begun, and that the said sum of (\$1,200) with interest from (*February 3*, 1916), is now due and owing to this deponent from the said defendant over and above all counterclaims known to deponent. The summons herein has been issued and no previous application for the present attachment has been made.

(ANDREW BUTT.)

Sworn to before me, this }
 (8th) day of (*September*, 1916). }

(WILLIAM BLACK),

Notary Public,

(*New York*) County, No. (17.)

On Papers in Another Action

FORM No. 9

Affidavit to Obtain Attachment—Ground: Departure of Defendant
Referring to Affidavits in Similar ApplicationSUPREME COURT,
(*New York*) County.

(GENERAL SUPPLY CO.,)	} Plaintiff,
against	
(LAWRENCE WEST,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*FREDERICK STOW*), being duly sworn, says that the plaintiff herein is a domestic corporation, organized and existing under the laws of the State of New York, and having its principal place of business at (*No. 100 Broadway in the Borough of Manhattan, City of New York*).

That deponent is and was during all the times herein mentioned, an officer of plaintiff, to wit: (*President*) thereof, and was such (*president*) at all of the times hereinafter stated. That deponent as such (*president*) now has and at all of said times had, the general management, direction and control of the business of said corporation and conducted all the negotiations leading up to and concerning the making and delivery of the note hereinafter described.

That a cause of action exists in favor of plaintiff and against defendant, for the recovery of a sum of money only, as damages for a breach of contract, other than a contract to marry, and that said cause of action arose out of and is based upon the following facts, to wit:

(*At the City of New York on or about the 1st day of (June, 1915), the defendant made his certain promissory note in writing, whereby he promised to pay to the order of plaintiff one month after date, twenty-five hundred dollars (\$2,500.00), with interest, at No. 45 Liberty Street, New York City, and delivered the same to plaintiff. That plaintiff is now the owner and holder of said*

On Papers in Another Action

promissory note, and the same has not been paid nor any part thereof.)

That defendant was a resident of the State of New York on the (7th) day of (*February*, 1916), [present facts to show how deponent knows that defendant is a resident of the State] and that deponent is informed and verily believes that said defendant has departed from the State of New York with intent to defraud his creditors and to avoid the service of a summons. That the source of deponent's information and the grounds of his belief are the affidavits made in the case of (*Jacob Low*) against (*Lawrence West*), the above-named defendant, which action is now pending in this court, and which affidavits are respectively made by (*Joseph Kee*), verified the (9th) day of (*February*, 1916), and (*Peter Lewis*), verified the (9th) day of (*February*, 1916). That said affidavits were on the (10th) day of (*February*, 1916), presented to the Hon. (*John Ford*), one of the justices of this Court, and were on that day ordered filed, and filed in the office of the Clerk of the County of (*New York*). [Here state why originals are not obtained.] That copies of said affidavits are hereto annexed and deponent refers to said original affidavits as a part of this affidavit, and exhibits them to this Court.

That the plaintiff in this action is entitled to recover from the defendant on the cause of action above set forth, the sum of (*twenty-five hundred dollars* (\$2,500.00)), with interest thereon, from the (1st) day of (*July*, 1915), over and above all counter-claims known to deponent or to plaintiff.

That plaintiff has commenced this action to recover said sum of (*twenty-five hundred dollars* (\$2,500.00)), with interest as afore-said, on said cause of action, and the summons herein has been duly issued, and a copy thereof is hereto annexed. And the warrant herein is asked for to accompany the same.

That no previous application has been made for a warrant of attachment herein.

(*FREDERICK STOW.*)

Sworn to before me, this }
(12th) day of (*February*, 1916). }

(*WILLIAM BLACK*),

Notary Public,

(*New York*) County, No. (17.)

Affidavit of Correctness of Copies

FORM No. 10

Affidavit of Comparison and Correctness of Copies

SUPREME COURT,
(*New York*) County.

(GENERAL SUPPLY COMPANY),	}
Plaintiff,	
against	
(LAWRENCE WEST),	
Defendant.	}

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JAMES ROGERS*), being duly sworn says, that he is a stenographer and typewriter over the age of twenty-one years. That on the (11th) day of (*February*, 1916), he made the annexed copies of the affidavits of (*Joseph Kee*) and (*Peter Lewis*), filed in the office of the clerk of the county of (*New York*) on the (10th) day of (*February*, 1916), and referred to in the affidavit of (*Frederick Stow*) hereto annexed. That he has carefully compared the annexed copies of said affidavits with the originals thereof, and that said copies are true and correct copies of said originals.

(*JAMES ROGERS.*)

Sworn to before me, this }
(12th) day of (*February*, 1916). }

(*WILLIAM BLACK*),
Notary Public,
(*New York*) County, No. (17.)

Defendant, a Foreign Corporation

FORM No. 11**Affidavit to Obtain Attachment — Assigned Cause of Action —
Defendant, a Foreign Corporation**

SUPREME COURT,
(*New York*) County.

(*ANDREW WILLIAMSON*),

Plaintiff,
against

(*FRIEND FRUIT COMPANY*),

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*ANDREW WILLIAMSON*), being duly sworn, deposes and says: That he is the plaintiff in the above entitled action, and is a resident of this State, residing at (*No. 897 Fourth Avenue, Borough of Manhattan, City of New York*). Deponent further says that the defendant is a foreign corporation, incorporated under the laws of the State of (*New Jersey*), having its principal place of business at (*Trenton*) in said State; that deponent has often visited the said offices in said State and that he was informed by the (*President*) of said Company, (*Mr. John Roome*), on (*September 10, 1916*), that said Company was incorporated in New Jersey, (*saying "Our Company is incorporated in New Jersey."*) That there is hereto annexed and made a part of this affidavit the Certificate of the Secretary of State of (*New Jersey*) under the seal of said State, certifying that the ("*Friend Fruit Company was incorporated in the State of New Jersey on the 18th day of August, 1914*").

That a cause of action exists in favor of this plaintiff and against the above-named defendant for the recovery of a sum of money only, as damages for a breach of an express contract other than a contract to marry and that said cause of action arose from and is based upon the following facts:

(*That between January 1, 1914, and March 2nd, 1914, Charles Dane, Edward Foy, George Harper, Isaac Jansen and Frank Lessing, doing business under the firm name of Harper & Company at the City of New York, sold and delivered to the said defendant, The Friend Fruit Company, the following goods at*

Defendant, a Foreign Corporation

the agreed prices hereinafter stated, to wit: 4,000 baskets of grapes, for which the defendant agreed to pay the sum of \$1,200, but never has paid for the same or any part thereof), which allegations as to the incorporation of the defendant and the sale and delivery of the said goods are made by this deponent upon information and belief, derived from the affidavit of (Philip Adena), verified the (18th) day of (August, 1916,) upon which an attachment was issued against this same defendant, which affidavit was filed in the office of the clerk of the County of (New York), in an action entitled (Harper & Co. against Friend Fruit Company), a copy of which affidavit is hereto annexed marked ("A"). The reason why deponent does not produce an affidavit by said (Philip Adena) is that said (Adena) resides in (Philadelphia) in the State of (Pennsylvania,) as appears from the aforesaid affidavit, and that he is not now in the State of (New York, deponent having on August 20, 1916, escorted said Adena to the train upon his departure for Chicago, at which time he told deponent he was going West and would not return until October 1, 1916), and deponent is unable to procure from him an affidavit as to the facts; deponent further says that the cause of action hereinbefore set forth has been assigned to this deponent, and deponent is now the lawful holder thereof and was such when this action was begun, and that the said sum of (\$1,200) with interest, from the (2nd) day of (March, 1914) is now due and owing to this deponent from the said defendant over and above all counterclaims known to deponent. The summons herein has been issued and no previous application for the present attachment has been made.

(ANDREW WILLIAMSON).

Sworn to before me, this }
(12th) day of (September, 1916.) }

(WILLIAM BLACK),

Notary Public,

(New York) County, No. (17.)

Affidavit by Agent

FORM No. 12

***Affidavit to Obtain Attachment — By an Agent — Ground: Defendant Has Disposed of His Property**

SUPREME COURT,
(*New York*) County.

(<i>JOHN DOE</i> ,)	} Plaintiff,
against	
(<i>RICHARD ROE</i> ,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*ANTHONY BARLOW*), being duly sworn, says he is the agent of the plaintiff herein (*who resides in Great Britain*), and deponent has sole charge of his business in the (*City of New York*). That the defendant resides at (*No. 13 Washington Square, Borough of Manhattan, City of New York*). That a cause of action exists in favor of this plaintiff and against the above-named defendant for the recovery of a sum of money only, as damages for a breach of an express contract other than a contract to marry and that said cause of action arose from and is based upon the following facts:

(*That at the City of New York and between the 3rd day of July, 1914, and the 15th day of August, 1914, deponent on behalf of and as agent for the plaintiff, sold and delivered to the defendant goods, wares and merchandise amounting in value at prices agreed upon to the sum of \$850.00, no part of which has been paid, except the sum of \$200.00, leaving still due and owing the sum of \$650.00, with interest thereon from the 15th day of August, 1914, which is now unpaid.*) That plaintiff is entitled to recover from said defendant the sum of (\$650.00) with interest from the (15th) day of (*August, 1914*), over and above all counterclaims known to deponent or plaintiff. And this deponent further alleges on information and belief derived from the affidavit of (*Charles Done*) and (*Edward Fare*), verified this (20th) day of (*August, 1915*), and hereto attached, that the defendant has disposed of his property with intent to defraud his creditors.

* See also Forms 16 and 17, pp. 246, 248.

Ground: False Statement

No previous application for this warrant of attachment has been made.

(ANTHONY BARLOW).

Sworn to before me, this }
(20th) day of (August, 1915.) }

(WILLIAM JAMESON),
Notary Public,
(New York) County, No. (72.)

FORM No. 13

***Affidavit to Obtain Attachment — Ground: Debtor's False Statement
to Secure Credit**

SUPREME COURT,
(New York) County.

(NEW YORK COMMERCIAL COM-
PANY,)

Plaintiff,

against

(HENRY HARD,)

Defendant.

STATE OF NEW YORK, }
County of (New York), } ss.:

(JAMES PEET), being duly sworn, says that the plaintiff above named is a domestic corporation organized and existing under the laws of the State of New York, and having its principal place of business at (No. 82 West Street), in the (Borough of Manhattan, City of New York).

1. That deponent is the (*president*) of said corporation, plaintiff, and was such (*president*) at all of the times hereinafter stated. That as such (*president*), deponent now has, and at all of said times had the management, direction, and control of plaintiff's business.

* See also Form 18, p. 249.

Ground: False Statement

2. That a cause of action exists in favor of the plaintiff and against the above named defendant for the recovery of a sum of money only, as damages for a breach of an (*express*) contract, other than a contract to marry, and that said cause of action grew out of, and is based upon, the following facts, to wit:

3. (*At the City of New York, and on or about the 15th day of March, 1914, plaintiff sold and delivered to defendant at defendant's special instance and request, and at prices agreed upon, and on a credit of three months, certain goods, wares, and merchandise, to wit: 106 boxes of oranges, amounting in the aggregate at such agreed prices to the sum of \$274.97. That said term of credit has expired,*) and said sum has not been paid, nor any part thereof.

4. That plaintiff is entitled to recover from defendant on said cause of action said sum of (\$274.97), with interest thereon from said (15th) day of (*June, 1914*), over and above all counterclaims known to deponent or to plaintiff.

5. That plaintiff has commenced this action to recover said sum on said cause of action, and the summons herein has been duly issued, and a copy thereof is hereto annexed.

6. That at said (*City of New York*), and on or about said (15th) day of (*March, 1914*), the above-named defendant for the purpose of procuring credit from the plaintiff, made a statement in writing over his own signature as to his financial responsibility or standing, which statement was false and known by him so to be false at the time of making same, as appears by the affidavit of (*Edward Cass*), verified the (18th) day of (*June, 1916*), hereto annexed. That a copy of said statement is hereto annexed marked Exhibit "A", and made a part of this affidavit.

7. That the goods, wares, and merchandise above referred to were sold to defendant, and that the credit above referred to was given to defendant, by plaintiff, relying in good faith upon the said statement, and believing the same to be true.

8. That said term of credit, given to defendant by plaintiff expired on the (15th) day of (*June, 1914*), and that on or about the said (15th) day of (*June*) plaintiff received a written communication from defendant, whereby defendant declared himself to be insolvent, stating that his liabilities largely exceeded his assets and offered to allow any one interested to examine his books. That a copy of said communication is hereto annexed marked

Ground: False Statement

Exhibit "B," and made a part of this affidavit. That thereupon deponent had defendant's said books examined by one (*Edward Cass*), an expert bookkeeper, and the result of said examination appears from the affidavit of said (*Edward Cass*), which is hereto annexed.

That no previous application has been made for a warrant of attachment (or order of arrest) in this action.

(*JAMES PEET.*)

Sworn to before me, this }
(20th) day of (*June*, 1916). }

(*WILLIAM BLACK*),
Notary Public,
(*New York*) County, No. (17.)

EXHIBIT "A"

Written Statement made by Debtor

NEW YORK, (*March 14th*, 1916).

For the purpose of obtaining the credit this day granted me, and obtaining credit, which in the future may be granted me by (*The New York Commercial Company*), I make the following statement, which I know and declare to be true and correct, and I make it with the knowledge that the credit now or hereafter to be given me is given in reliance upon its truthfulness. This statement is made to apply to all future purchases, and is to be considered as repeated and confirmed at the time of each subsequent purchase, unless the said (*The New York Commercial Company*) is notified by me in writing to the contrary before such subsequent purchase.

In consideration of being granted said credit, I further agree that if after any purchase of merchandise from (*The New York Commercial Company*) on credit, any change occurs, diminishing my financial ability as below stated, to pay for said merchandise, I will within ten days after said change in my financial ability, notify in writing (*The New York Commercial Company*) of such change.

Before purchasing more merchandise from (*The New York Commercial Company*), I will in writing make known to it such change in my financial ability. When any bill for merchandise

Ground: False Statement

shall be past due and unpaid after demand, I will allow (*The New York Commercial Company*) to examine all my books by a bookkeeper or accountant selected by it.

City of New York.

Street and No. (6 *Washington St.*)

Business (*fruits*).

Present style of firm (*Henry Hard*).

Full names of partners (if any), (*none*).

Assessed value of real estate belonging to (*none*).

If mortgage, state amount of same (*none*).

References (*J. Crowley, Edward Taft*).

ASSETS

Mdse. cash value stock in hand — selling value...	(\$300 00)
Bills receivable, good and collectible when due, and not past due.....	(<i>None</i>)
Accounts receivable, good and that are not three months past due.....	(\$300 00)
Cash in (<i>N. Y. National Bank</i>) (state name of Bank)	(300 00)
Total	(\$900 00)
Cash in safe.....	(250 00)
	<u>(\$1,150 00)</u>

LIABILITIES

Bank accommodation	(<i>None</i>)
Borrowed money	(<i>None</i>)
Mdse. liabilities	(\$200 00)
Other liabilities	(<i>None</i>)
Total	(\$200 00)
Safe net surplus, insured for.....	(\$700 00)

(*HENRY HARD.*)

(*THOS. McDUFF*),
Witness.

Ground: False Statement

EXHIBIT "B"

Affidavit of Accountant

SUPREME COURT,
(*New York*) County.

(*NEW YORK COMMERCIAL COM-
PANY,*)

Plaintiff,

against

(*HENRY HARD,*)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*EDWARD CASS*), being duly sworn, says that he understands the art of bookkeeping and of accounts and is expert in the same, and is in the employ as general bookkeeper of plaintiff herein and has been engaged in bookkeeping from time to time for (*ten*) years past.

That on or about (*June 17th, 1916*), at the request of plaintiff, deponent went to the place of business of the defendant, and there examined his books together with the statement or balance sheet of defendant made (*June 15th, 1916*).

(*That the books of defendant show that he was indebted on March 14th, 1916, to the following parties in the amounts set opposite their names respectively:*

<i>Jones & Co.</i>	\$167 38
<i>Keep & Co.</i>	55 00
<i>R. May</i>	255 00
<i>Total</i>	<u>\$477 38</u>

Whereas the statement of defendant made *March 14th, 1914*, shows his total indebtedness to be two hundred (200) dollars.)

(*EDWARD CASS*).

Sworn to before me, this }
(*18th*) day of (*June, 1916*). }

(*WILLIAM TUCK*),

Notary Public,

(*New York*) County, No. (28).

ARREST

ORDER OF ARREST

FORM No. 14

Order to Arrest and Hold to Bail

SUPREME COURT,
(*New York*) County.

(<i>THOMAS GUY, BURTON LAMB and WILLIAM LAMB, doing busi- ness as co-partners under the name and style of GUY, LAMB & CO.,</i>	} Plaintiffs, against (<i>JOHN SHARPE,</i>) Defendant.

To the Sheriff of the County of (*New York*):

It having been made to appear to me by the affidavit of (*Burton Lamb*), verified the (*5th*) day of (*September, 1916*), that a sufficient cause of action exists against the defendant, (*John Sharpe*), and that the case is one of those mentioned in article 1st, chapter 7, title 1, of the New York Code of Civil Procedure, and that the ground of arrest is (*fraud and misrepresentation in inducing plaintiffs to enter into a contract for the sale and delivery of merchandise*).

YOU ARE REQUIRED forthwith to arrest (*John Sharpe*), the defendant in this action, if he be found within your county, and to hold him to bail in the sum of . . . : . . . , and to return this order, with your proceedings thereunder, as prescribed by law.

Dated, (*September 7th 1916.*)

(*JOHN FORD*),
Justice of the (*Supreme*) Court.

(*NELSON DOW,*)
Plaintiff's Attorney,
(*206 Broadway, New York City.*)

Plaintiff's Undertaking

FORM No. 15

Plaintiff's Undertaking on Order of Arrest

SUPREME COURT,
(*New York*) County.

(*THOMAS GUY, BURTON LAMB*
and WILLIAM LAMB, doing busi-
ness as

GUY, LAMB & CO.,)

Plaintiffs,

against

(*JOHN SHARPE,*)

Defendant.

WHEREAS, (*Thomas Guy, Burton Lamb, and William Lamb*), the plaintiffs above named, are about to make application to one of the (*justices*) of the above-named court for an order for the arrest of the above-named defendant, (*John Sharpe*), in the above-entitled action for (*damages arising from the fraud and misrepresentation of said defendant, inducing the plaintiffs to enter into a contract for the sale and delivery of merchandise, and from breach of said contract.*)

NOW, THEREFORE, we (*Charles A. Brown, of No. 16 Madison avenue, Borough of Manhattan, City of New York,* and (*James Stillman*), of (*No. 72 West 54th street, in said City and Borough*), do hereby, pursuant to the statute in such case made and provided, jointly and severally undertake, that if the defendant in said action recover judgment therein, or if it is finally decided that the plaintiffs are not entitled to the order of arrest, the said plaintiffs in said action will pay all costs which may be awarded to the said defendant, and all damages which he may sustain by reason of the arrest in said action, not exceeding the sum of (*five hundred*) dollars.

(*CHARLES A. BROWN.*)

(*JAMES STILLMAN.*)

Dated, (*September 5, 1916*).

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*CHARLES A. BROWN*), one of the subscribers and sureties above named, being duly sworn, says, that he is a resident of, and

Plaintiff's Undertaking

a householder within the State of New York, and is worth the sum of (*one thousand*) dollars over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

(*CHARLES A. BROWN.*)

Sworn to before me, this }
(5th) day of (*September, 1915*). }

(*ALBERT BORDEN*),

Notary Public,

(*N. Y.*) Co.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JAMES STILLMAN*), one of the subscribers and sureties above named, being duly sworn, says, that he is a resident of and a free-holder within the State of New York, and is worth the sum of (*one thousand*) dollars over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

(*JAMES STILLMAN.*)

Sworn to before me, this }
(5th) day of (*September, 1915*). }

(*ALBERT BORDEN*),

Notary Public,

(*N. Y.*) Co.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

I CERTIFY, that on this (*5th*) day of (*September, 1915*), before me personally appeared (*Charles A. Brown and James Stillman*), to me known, and known to me to be the same persons described in and who executed the above undertaking, and they severally acknowledged to me that they had executed the same.

(*ALBERT BORDEN*),

Notary Public,

(*N. Y.*) Co.

[Endorsement]

I approve of the within undertaking as to form, and the sufficiency of the sureties therein named.

Dated, (*New York, September 7, 1916*).

(*JOHN FORD*),

J. S. C.

What Must be Shown

AN AFFIDAVIT TO OBTAIN AN ORDER OF ARREST SHOULD SHOW
IN SUBSTANCE

A. When right is based on nature of action.

1. That one of the causes of action set forth in subdivisions 1, 2 and 3 of section 549 of the Code of Civil Procedure exists in favor of the plaintiff.

This must be shown by a statement of the facts out of which the cause of action arises. It is also well to state specifically the ground on which the arrest is claimed.

2. That an action has been commenced (and the status thereof), or that an action is about to be begun and a summons issued, and copy annexed.
3. That no previous application has been made.

B. Where the right to arrest depends upon extrinsic facts.

1. (a) That a cause of action express or implied (other than a contract to marry) exists in favor of the plaintiff and

(b) *Further* facts showing that one of the grounds stated in subdivision 4 of section 549 exists, or

2. That the judgment asked requires the performance by the defendant of an act, failure to perform which, may be punished as contempt, and that

Defendant is a non-resident; or

a resident and intends to depart from the jurisdiction, and that the performance of the court's order or judgment will thereby be rendered ineffectual.

3. That an action has been commenced (and the status thereof), or that an action is about to be begun and a summons issued, and a copy annexed.
4. That no previous application has been made.

As to manner of stating facts, see note on attachment, p. 224.

A woman cannot be arrested under these provisions except in a case where the order can be granted only by the Court; or where it appears that the action is to recover damages for a *wilful* injury to person, character or property. (§ 553, Code.)

Ground: Removal of Goods

FORM No. 16

***Affidavit to Obtain Order of Arrest — Ground: Removal of Goods
with Intent to Defraud Creditors**

(CITY COURT OF THE CITY OF NEW YORK.)

(ANDREW OLWELL and HER-	}
MAN L. KALT,)	
against	
Plaintiffs,	
(HARRY N. BRONSON, GEORGE	}
E. SECOUR and JOHN S. POPE,)	
Defendants.	

STATE OF NEW YORK, } ss.:
County of (*New York*), }

(*HERMAN L. KALT*), being duly sworn, deposes and says:

That he is one of the plaintiffs in the above-entitled action, and that they are doing business under the firm name of (*Marshall, Olwell & Company*), and the defendants above named are co-partners doing business in the (*City of New York*), under the firm name of (*Bronson, Secour & Pope*); that the defendants above named are indebted unto the plaintiffs in the sum of (\$1,399.34) which sum is due over and above all counterclaims and set-offs known to deponent or to these plaintiffs, and this action is brought to recover damages for breach of (*express*) contract, other than a contract to marry, and arises as follows:

(*That at the City of New York and between the 1st day of July, 1914 and the 19th day of August, 1915, this deponent's firm sold and delivered unto the defendants in their said firm name, goods, wares, and merchandise upon a credit and of the value and at the agreed price of \$2,396.31, and defendants have paid on account thereof the sum of \$997.17, leaving a balance due plaintiffs by the defendants of \$1,399.34, which sum is now due the plaintiffs as hereinbefore alleged.*

That deponent charges that the defendants have disposed of, and are about to dispose of their property with intent to cheat, hinder, delay and defraud their creditors, among them these plaintiffs, as deponent is informed and believes from the affidavit of (*John Wilson*) hereto annexed and made a part hereof, and from personal knowledge of the facts hereinafter set forth.

* Forms 16 and 17 are suitable also for an application for an attachment on this ground.

Ground: Removal of Goods

From the 1st day of December deponent repeatedly sent to the defendants for the money due without avail. On the 30th day of December, 1915, this deponent sent for Mr. Bronson, one of the defendants, desiring to see him at his, deponent's office. Said Mr. Bronson called there and deponent stated to him in the presence of Mr. Olwell, his partner, that the moneys due to his firm must be paid; that he had heard that his, Mr. Bronson's, firm were going behind and were insolvent, and could not possibly pay their debts in full. Mr. Bronson then said that Mr. Pope of his firm had severed his connections with the firm, and that he and Mr. Secour were liquidating its liabilities; that they were insolvent, and could not pay, as the thing then stood, more than fifty cents on the dollar, providing the creditors would permit them to continue the business without molestation, but that if they were pressed several of the creditors had threatened to bring suit, and there would be nothing else left for them to do but to wind up.

Deponent said, "How and when will we get our money and how much, if we take no proceedings against you?" Mr. Bronson said, "I can't exactly tell. I have been in business a great many years, and I don't intend to go out and leave myself high and dry and unprovided for. If the creditors take proceedings against me I shall have to do something to protect myself, and I certainly think it would be wiser for you to leave us alone and see what will come out of it." Deponent said, "We don't intend to let you carry on this business while you are insolvent, and thus eat up what little there is there." The defendant Bronson said, "You go ahead and you can do just as you please. If you sue us you will get nothing."

Deponent has ascertained that Mr. Secour of the said firm is now in Europe, having left while they were insolvent, and that there is no chance of process being served upon him.

That an action is about to be commenced and the summons herein has been issued, a copy of which is hereto annexed. An order of arrest is asked for herein to accompany the summons.

No previous application has been made for the same to any other judge or court.

(HERMAN L. KALT.)

Sworn to before me, this }
(31st) day of (December, 1915). }

(OSCAR K. BROWNE),

Notary Public,

(New York) County, No. (64).

Ground: Removal of Goods

FORM No. 17

Affidavit in Support of Same

(CITY COURT OF THE CITY OF NEW YORK.)

(ANDREW OLWELL and HER-
MAN L. KALT,)

Plaintiffs,

against

(HARRY N. BRONSON, GEORGE
E. SECOUR and JOHN S. POPE,)

Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(JOHN WILSON), being duly sworn, deposes and says:

He is over twenty-one years of age and resides at (1001 *Bank Street in the Borough of Manhattan, City of New York.*) That he is a duly licensed private detective and has been so engaged for (*ten*) years last past.

That on December 24, 1915, he was employed by Mr. Herman L. Kalt, a member of the firm of Marshall, Olwell & Company to investigate the condition of the business dealings of the firm of Bronson, Secour & Pope, and to report to said Kalt concerning same.

That pursuant to said employment, he visited the store of said firm at 1163 White Street, in the Borough of Manhattan, City of New York, on several occasions and met Mr. John S. Pope of that firm. That on December 24, 1915, at said place of business deponent stated to said Pope as follows: "I am employed in the dry-goods business in Cuba and am looking for some great bargains before I go away. Have you any such?" That said Pope showed him many lines of goods and stated: "You can have these xxx silks very cheap." Thereupon said Pope said: "We will let you have one thousand yards of the xxx silks for thirty cents a yard, F. O. B., Steamship "Havana" sailing this Saturday, provided you will pay cash. They are actually worth five times that, but we are in need of the cash." Thereupon a memorandum of sale was signed by me and by said Pope on behalf of his said firm.

That I have exhibited a sample of said goods which I then and there received from said (*Pope*) to two persons, (*James Wile and Frank Thorpe*) who are employed in the silk business and deal in similar goods and they informed me that the market value of said silks on (*December 24, 1915 was one dollar*) a yard and are staple articles in the trade; that the said sample I exhibited to them and each of them is the same sample given me by said (*Pope*) on (*December 24, 1915.*) That the affidavits of said (*Wile*) and (*Thorpe*) are hereto annexed.

Sworn to before me, this }
(31st) day of (December, 1915). }
(OSCAR K. BROWNE),
Notary Public
(New York) County, No. (64).

Affidavit to Obtain Order of Arrest — Ground: Fraudulent Mis- **representations**

(THOMAS GUY, BURTON LAMB
and WILLIAM LAMB, doing busi-
ness as co-partners under the name
and style of

Defendant.

BURTON LAMB, being duly sworn, says:

I. I am (a member of the firm of Guy, Lamb & Co., doing business in the City of New York, and) one of the plaintiffs above named. For a year past I had entire charge of said firm's

Ground: Fraudulent Misrepresentation

department of credit and accounts and am familiar with all transactions had by said firm with (*John Sharpe*), the defendant, during that time.

II. A cause of action exists in favor of the plaintiffs above named and against the defendant, (*John Sharpe*), for damages arising from false and fraudulent misrepresentations made by the said (*Sharpe*) to the plaintiffs in the City of (*New York*), for the purpose of inducing plaintiffs to sell goods to defendant upon credit, and with intent to cheat and defraud plaintiffs out of the purchase price of said goods, and an action is about to be brought by plaintiffs against the defendant upon said cause of action, as more fully appears by the summons and complaint hereto annexed (or an action has been brought upon said cause of action and the summons therein served on the defendant on the (*tenth*) day of (*March*, 1914.) Defendant has not appeared in said action and the complaint has not yet been served).

III. The facts constituting plaintiffs' cause of action are as follows: (Set forth the nature of the cause of action in detail.)

IV. Heretofore and on or about the 5th day of *January*, 1914, the defendant, (*John Sharpe*), ordered of the plaintiffs a bill of merchandise consisting of (*silks and velvets*) of the value of, and for which the defendant promised and agreed to pay (*eighteen hundred*) dollars upon a term of credit of (*thirty*) days. For the purpose of inducing the plaintiffs to sell said merchandise to him said defendant, who was engaged in business as (*retail dealer in dry goods*, at *Middletown, New York*), stated and represented to the plaintiffs, among other things, that he had a stock of goods worth at least (\$7,000.00), (\$1,500.00) in good and collectible accounts, and was worth over all debts and liabilities which he owed or had incurred at least the sum of (\$10,000.00) based on the assets and liabilities of his business. Said defendant further stated and represented to the plaintiffs that his liabilities did not exceed (\$2,000.00), which was for merchandise only and that at that time he was owing no borrowed capital or money, all of which statements were false and made by said (*John Sharpe*), knowingly and with intent to deceive and defraud the plaintiffs.

V. Plaintiffs relying on said statements and believing them to be true, were induced solely by reason of said statements and representations, to sell and deliver, and did sell and deliver, to the defendant the bill of merchandise above mentioned, on or about the (*10th*) day of (*January*, 1914). No part of the sum of (*eighteen hundred*) dollars, which the defendant promised and

Ground: Fraudulent Misrepresentation

agreed to pay within (*thirty*) days after the delivery of said goods, has been paid.

VI. On or about (*January 11, 1914*), I was informed by (*Henry Nason*), a member of the firm of (*Douglass, Nason & Co.*), that said firm had sold and delivered to the defendant, (*John Sharpe*), prior to (*January 5, 1914*), the date on which the defendant made the statements and representations as above set forth, bills of merchandise amounting to (\$2,500) on credit of (*sixty*) days, no part of which had yet been paid. An affidavit of said (*Henry Nason*), verified the (*fifth*) day of (*February, 1914*), is hereto annexed.

VII. On *January 15, 1914*, I visited defendant's place of business above and made an examination of the stock therein and found that more than three-fourths of said stock consisted of old goods that could not be readily marketed except at a great sacrifice. In my opinion the present value of the whole of said stock, aside from the goods purchased from (*Douglass, Nason & Co.*), referred to, does not exceed (*two thousand dollars*).

VIII. On or about (*January 25, 1914*), the defendant confessed judgment in the Supreme Court in favor of (*Henrietta Sharpe*), his wife, by a statement and confession of judgment duly verified and filed in the office of the Clerk of the County of (*Westchester*) on that day for the sum of (*four thousand*) dollars. Said statement and confession of judgment states that the same was made for money loaned by said (*Henrietta Sharpe*) to the defendant at various times between (*March 1, 1913*, and (*December 15, 1913*), and that there was then due and unpaid from the defendant to said (*Henrietta Sharpe*) the sum of (\$4,000), as by reference to said confession of judgment filed in said County Clerk's office, to which deponent begs leave to refer, and by the certified copy thereof hereto annexed will more fully appear.

I therefore state to the court that the representations and statements made by defendant to the plaintiffs on the (*5th*) day of (*January, 1914*), were false and were knowingly and deliberately made for the purpose of defrauding plaintiffs.

No previous application for an order of arrest has been made.
(*BURTON LAMB.*)

Sworn to before me, this (*10th*) }
day of (*March, 1914*). }

(*FRANK WOOD*),

Notary Public,

(*N. Y.*) Co.

NOTICES BEFORE COMMENCING ACTION

Notices of Claim Against Municipalities

I. Claims arising out of injuries to person (including claims for death caused thereby).

A. Against the City of New York.

No action can be brought unless

1. A notice of intention to sue has been presented to the Corporation Counsel *within six months after the cause of action accrued*. (L. 1886, Ch. 572.)

In actions for personal injuries, this means *six months after the injury was received*. (*Bernreither v. City of New York*, 123 App. Div. 291, *aff'd* 196 N. Y. 506.) A vague and indefinite statement of the claim is not a compliance with the statute. (*Casey v. City of N. Y.*, 217 N. Y. 192.)

In actions for causing death, this means six months after the appointment of an administrator or executor. (*Conway v. City of New York*, 139 App. Div. 446.)

2. A notice of the claim has been presented to the Comptroller and *thirty days have elapsed* since the presentation of the claim. (Revised Charter, § 261; L. 1912, Ch. 452.)

These notices may be served separately. It is common practice, however, to combine them in one paper, addressed to the Comptroller and the Corporation Counsel, but served upon each officer separately. A vague and indefinite statement of the claim is insufficient. (*Casey v. City of N. Y.*, *supra*.)

3. The action is commenced *within one year* after the cause of action accrues. (L. 1886, Ch. 572.)
4. All of the above facts are alleged in the complaint. This is true even though the pleadings are oral. (*Watts v. City of New York*, 133 App. Div. 400.)

Against Municipality — Personal Injury

Chapter 572 of the Laws of 1886 is a Statute of Limitation. Compliance with all the above requirements within the time specified should affirmatively appear in the complaint. (*Watts v. City of New York, supra.*) Defects in notices are not waived by retention by the city. (*Mack Paving Co. v. City of New York, 142 App. Div. 702.*)

For effect of infancy and death of administrator upon the running of the statute, see *Conway v. City of New York, supra.*

B. Against cities having 50,000 inhabitants.

No action can be brought unless

1. A notice of intention to sue must be presented to the counsel to the corporation or other proper law officer thereof *within six months after the cause of action accrued, i. e.,* within six months after the injury was received or (in death cases) after the appointment of an executor or administrator. (L. 1886, Ch. 572; *Bernreither v. City of New York, supra*; *Conway v. City of New York, supra.*) A vague and indefinite statement of the claim is insufficient. (*Casey v. City of N. Y., supra.*)
2. Notice of the claim has been presented to the proper fiscal officer of the city.
See Second Class Cities Law, Art. 16, §. 244, and consult the Charter of the City involved and local statutes relating thereto and *Winter v. City of Niagara Falls, 190 N. Y. 198.*
3. Action is commenced *within one year* after cause of action accrues. (L. 1886, Ch. 572.)
4. Compliance with all statutory provisions within the time specified must be alleged in the complaint.

C. Against all other Cities and Villages.

See 322 and 341, General Village Law and any local statutes.

To City of New York — Property Damage

II. Claims arising out of injuries to real or personal property.

A. Against the City of New York.

All of the provisions under I apply *and in addition thereto* the following statutory requirements must be borne in mind. § 261 of the Charter, as amended by L. 1912, Ch. 452, provides:

“No action or special proceedings, for any cause whatever, shall be prosecuted or maintained against the city of New York, unless it shall appear by and as an allegation in the complaint or necessary moving papers that at least thirty days have elapsed since the demand, claim or claims upon which such action or special proceeding is founded were presented to the comptroller of said city for adjustment, and that he has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment; *and in the case of claims against said city, accruing after the passage of this act, for damages for injuries to real or personal property, or for the destruction thereof, alleged to have been sustained by reason of the negligence of, or by the creation or maintenance of a nuisance by said city, or any department, board, officer, agent or employee thereof, no action thereon shall be maintained against said city unless such action shall be commenced within one year after the cause of action therefor shall have accrued, nor unless notice of the intention to commence such action and of the time when and place where the damages were incurred or sustained, together with a verified statement showing in detail the property alleged to have been damaged or destroyed, and the value thereof, shall have been filed with the comptroller of said city within six months after such cause of action shall have accrued.*”

(See *Lautman v. City of New York*, 157 App. Div. 219.)

To Municipality — Contract

B. Against cities having 50,000 inhabitants.

Consult Charter and local statutes for similar requirements. (See Second Class Cities Law, Art. 16, § 244.)

C. Against other Cities and Villages.

Consult Charter and local statutes and see §§ 322 and 341, General Village Law.

III. Claims arising out of contracts.

A. Against City of New York.

No action can be brought unless

1. A notice of the claim has been presented to the Comptroller and *thirty days have elapsed* since such presentation. (§ 261, Charter, as amended by L. 1912, Ch. 452; *Mack Paving Co. v. City of New York*, 142 App. Div. 702.)

Laws of 1912, Ch. 398, provides as follows:

“ * * * The comptroller may require any person presenting for settlement an account or claim for any cause whatever, against the corporation, to be sworn before him or before either of the deputy comptrollers, touching such account or claim, and when so sworn, to answer orally as to any facts relative to the justness of such account or claim * * *.”

It has been held that Ch. 398 and Ch. 452, Laws 1912, must be read together.

2. Compliance with these statutory requirements affirmatively appears in the complaint. (*Mack Paving Co. v. City of New York*, *supra*.)

B. Against cities having 50,000 inhabitants.

Consult Charter and local laws for similar requirements. (See Second Class Cities Law, Art. 16, § 244.)

C. Against other Cities and Villages..

Consult General Village Law, §§ 322 and 341, Charters and local laws.

To Municipal Corporation — Personal Injury

FORM No. 19**Notice of Claim and of Intention to Sue Municipal Corporation for
Personal Injury***

IN THE MATTER OF THE Claim of (ALICE SMITH,) } against (THE CITY OF NEW YORK.)
--

Gentlemen:

PLEASE TAKE NOTICE that I, (*Alice Smith*), the undersigned, pursuant to the statutes in such cases made and provided, do hereby claim and demand of and from the (*City of New York*) the sum of (\$5,000) as and for damages sustained by reason of the injury caused me on the (23d) day of (*March*, 1916), by and through the negligence of (*the City of New York*), its officials, agents and servants, in (*permitting that portion of the sidewalk on the east side of Eighth Avenue, in the City of New York between Twenty-fifth and Twenty-sixth Streets, in front of premises No. 284,† to be in an unsafe and unpassable condition so that I, the said Alice Smith, in passing on said sidewalk on the said 23d day of March, 1916, at or about 5:23 P. M., fell into a deep hole or depression in the sidewalk (here state details of condition) and was thereby severely injured.*)

You will please further take notice that I, the undersigned, will claim, charge and maintain that the said injury was caused without any negligence on my part and wholly through the negligence of (*the City of New York*), its officials, agents and servants, in negligently and improperly (*suffering and permitting the said sidewalk on said street or avenue to remain in a dangerous condition, and in permitting its use while in said condition without proper safeguards or other signals or warning*).

You will further take notice that, in default of the (*City of New York*) to pay me the aforesaid sum of (\$5,000), within the

* This notice is applicable only to actions for personal injuries. In actions for injuries to property arising from negligence or nuisance a verified statement in detail of the property and its value, as well as the notice of intention to commence action and the presentation of the claim for adjustment. See note, p. 254.

† 193 N. Y. 521; 217 N. Y. 192.

To Municipal Corporation — Personal Injury

time limited for compliance with this demand by the said (*City*) in such cases made and provided, I shall commence an action against the (*City of New York*) on the claim for (\$5,000,) for damages for said injury.

Dated, (*New York, April 10, 1916.*)

Respectfully yours,

(*ALICE SMITH,*) Claimant,

(*231 West 87th Street,*)

(*Borough of Manhattan,*)

(*City of New York.*)

(*JAMES BURR,*)

Atty. for (*Alice Smith,*) Claimant.

(*27 Pine Street,*)

(*New York City.*)

To

(*William A. Prendergast,*) Comptroller,

(*Lamar Hardy,*) Corporation Counsel.

FORM No. 20

**Notice to Municipal Corporation of Claim and of Intention to Sue —
Personal Injury**

To (*Frank Polk,*)

Corporation Counsel,

(*Hall of Records, New York City.*)

PLEASE TAKE NOTICE that hereto annexed is a copy of a claim heretofore and on (*April 2, 1914,*) served upon the (*Comptroller*) of the (*City of New York,*) which said notice is hereby made a part of this present notice.

Further take notice that the undersigned intends to sue the (*City of New York*) upon the claim referred to in the notice hereto annexed.

Dated, (*New York, June 25, 1914.*)

(*SARA EGAN,*)

(*HARDIN & WHITE,*)

Claimant.

Attorneys for Claimant,

(*161 Broadway,*)

(*New York City.*)

To Municipal Corporation — Personal Injury

To the (*Comptroller*) of the (*City of New York*.)

PLEASE TAKE NOTICE that the following claim and demand of the undersigned, (*Sara Egan*.) is presented to you for adjustment in pursuance of the provisions of (*Section 261 of the Greater New York Charter*.)

The claim and demand so hereby presented arises out of the following facts and circumstances:

On (*March 6, 1914, in the forenoon of that day*.) the undersigned was lawfully (*in and upon the street at the intersection of 155th Street Viaduct and the Speedway in the Borough of Manhattan, City of New York, and was lawfully walking therein and using all due care and caution. The undersigned at the time mentioned attempted to cross the Speedway at the North crosswalk at the intersection of 155th Street Viaduct and the Speedway*) and while so doing fell and was injured, as will hereinafter appear.

Said fall and injuries were caused by reason of the fact that the (*City of New York and its Departments*.) having jurisdiction of such matters, carelessly and negligently and with full notice thereof (*suffered and permitted ice and snow to accumulate on said walk, street and crossing at the point where the undersigned fell so as to become dangerous for persons passing along the same*.) and by reason of the (*City of New York*) and its various (*Departments*) aforesaid negligently and carelessly (*allowing said walk, street and crossing to be, become and remain in a condition dangerous to those passing along and on the same. Said accumulation of snow and ice*) and said dangerous condition were allowed by the (*City of New York and its Departments to exist and to remain for a period of time upwards of two weeks next preceding the date above set forth*).

By reason of the foregoing, the undersigned sustained serious bodily injuries and was rendered sick and sore and bruised and sustained, among other injuries, (*a fracture of the shoulder and a fracture of the elbow*) and has, as a result thereof, been confined to her bed and house, has required medicines and medical attention and has been prevented and will be further prevented from pursuing her usual and ordinary avocation and has expended large sums and will be required to expend further sums for medical and other attention, all to her great damage.

The amount of the claim herein presented for adjustment is (\$7,500.)

Dated, (*New York, March 31, 1914*.)

(*SARA EGAN*.)

To City of New York—Injury to Property

FORM No. 21**Notice of Claim and of Intention to Sue—Injury to Property**

IN THE MATTER OF THE
Claim of
(JOHN MUNN)

against

(THE CITY OF NEW YORK.)

To the (*Hon. William A. Prendergast*), Comptroller of the (*City of New York*),

To (*Lamar Hardy*), Esq., Corporation Counsel of said city.

Sirs:

PLEASE TAKE NOTICE that I, (*John Munn*), hereby make claim and demand against the (*City of New York*) for damages to (*personal property*), consisting of (*merchandise*) belonging to me amounting to the sum of (\$2,500,) which damage was sustained by reason of the following facts:

(*That on the 14th day of May, 1916, at ten o'clock in the morning of that day, the sewerage basin in front of the premises 19 Front Street, Borough of Manhattan, City of New York, was stopped up, causing an overflow of water and sewerage into said premises and the store, basement and cellar thereof, as a result of which my aforesaid property, to the extent of \$2,500, an itemized statement, description and value of which is hereto annexed, marked Exhibit "A" and made a part hereof, and which said personal property was contained in the store, basement and cellar of said premises, was completely damaged and destroyed. The overflow of water and sewerage was the result of the stopped up condition of the sewer and in which condition it was permitted to remain by and through the negligence of the City of New York, its officials, agents and servants, although such notice of such condition of the sewer had been duly given to the City of New York and the damage resulted by reason of such stopped up condition of the sewer and the delay of the City of New York to open the sewer basin for two days after it was notified that the said sewer basin was stopped up.*)

That said claim and demand is hereby presented for adjustment and payment.

 To City of New York — Contract Claim

Please take further notice that by reason of the premises, claimant intends to commence an action against the City of (*New York*) to recover said sum of (\$2,500) with interest and costs.

Dated, (*New York, May 30, 1916.*)

(*JOHN MUNN,*)

(*19 Front Street,*)

(*Borough of Manhattan,*)

(*New York City.*)

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*John Munn,*) being duly sworn, deposes and says that he is the claimant herein; that he has read the foregoing notice of claim and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

(*JOHN MUNN.*)

Sworn to before me, this }
 (30th) day of (*May, 1916.*) }

(*WILLIAM FROST,*)

Notary Public,

(*New York*) County,

Certificate filed in (*N. Y. Co.*)

FORM No. 22

***Notice of Claim to Comptroller of New York City and of Intention to Sue — Contract Claim**

To (*William A. Prendergast*), Comptroller of the City of New York:

PLEASE TAKE NOTICE that I, (*George Busse,*) the undersigned, notify you, pursuant to the statute in such cases made and provided, that I claim and demand of and from the City of New York the sum of (*five thousand, seven hundred (\$5,700)*) dollars, by reason and on account of (*here give a particular statement of the facts constituting the claim, in great detail.*)

Please further take notice that, upon default of the said city

* A copy of this notice must also be presented to the Corporation Counsel.

 To Village

to pay to me, the undersigned, the said sum of (\$5,700) within the time limited by the statute in such cases made and provided, I will commence an action against said city to recover said sum of (\$5,700) on account thereof.

Dated, (*New York*), the (*10th*) day of (*April*, 1916.)

(*GEORGE BUSSE*.)

(*JAMES GORDON*),

Attorney for (*Claimant*),
(*27 Pine Street*),
(*New York City*.)

 FORM No. 23

***Notice of Proposed Action Against Village**

To the Village Clerk of the Village of (*GROTON*):

PLEASE TAKE NOTICE that (*Arnold Bailey*) has a claim against the village of (*Groton*) for damages for (*personal injuries*) arising upon the following facts, (*here insert time, place of accident, nature and extent of injury and the cause thereof in great detail*) and that an action will be begun against said village to recover the sum of (\$5,000).

Dated, the (*23d*) day of (*February*, 1916.)

(*ARNOLD BAILEY*.)

STATE OF NEW YORK, }
County of (*Tompkins*), } ss.:

(*Arnold Bailéy*), being duly sworn, deposes and says that he is the claimant mentioned in and who executed the foregoing notice of claim; that the statements of fact therein contained are true to his own knowledge.

(*ARNOLD BAILEY*.)

Sworn to before, me this }
(*23d*) day of (*February*, 1916.) }

(*CHARLES JOHNSON*),
Notary Public,
(*Tompkins*) County.

See 83 *App. Div.* 581; 135 *N. Y.* 366.

* See note, p. 252.

To Employer — Under Labor Law

Notice to Employer

(Under Sec. 201 of Art. 14 of the Labor Law as Amended by Ch. 352, L. 1910.)

Such a notice to lay a foundation for an action based on the liability of the employer under the Statute (Labor Law) must be given *only* in cases where the injured employee was not engaged in occupation within the scope of the Workmen's Compensation Act, either

- (a) Under the compulsory provisions of that act based upon the hazardous nature of the employment; or
- (b) Under the permissive provisions of the Act (L. 1916, ch. 622) which permits any employer and his employees to bring themselves within the scope of the Act by joint election and proper notice.

In all other cases the notice must be served.

The notice must be in writing, and signed by the person injured or some one in his behalf, or in case of the death of the injured person, by his executor or administrator. (170 App. Div. 888.)

It must state "the time, place and cause of injury." This means that the accident should be so described that a person of ordinary intelligence who knew nothing about it could understand how it happened. (210 N. Y. 262.)

The notice must be given within 120 *days* after the happening of the accident, except:

- (a) If it is impossible for the injured person from mental or physical incapacity to give the notice within 120 days after the happening of the accident, it may be given within 10 *days* after such incapacity is removed.
- (b) In case of death without giving the notice, it may be given by the executor or administrator of the deceased employee within 60 *days* after his appointment.

The notice is not invalid or insufficient solely by reason of *any inaccuracy* in stating the time, place or cause of the injury, if it be shown that there was no intention to mislead or that the party entitled to the notice was not in fact misled thereby.

But an *omission* to state *essentials* required by the Statute is something more than "an inaccuracy." An omission to state

To Employer — Under Labor Law

facts requisite to give the notice called for by the Statute as to time, place and cause of the injury renders the notice ineffectual. (210 N. Y. 262.)

If the notice does not apprise the employer of the time, place or cause of injury, he may within 8 *days* after service of the notice, serve upon the sender, a written demand for a further notice, specifying the particulars in which the notice is claimed to be defective.

The failure of the employer to make such a demand is deemed a waiver of "all defects that the notice may contain." But as to whether the omission of an essential part of the notice would be deemed to be waived, see 210 N. Y. 262; 194 N. Y. 244, and 198 N. Y. 390.

Within 8 days after service by the employer of a demand for a further notice, the employee may serve an amended notice which supersedes the first notice and has the same effect as the original notice.

The notice must be served on the employer or if there is more than one, upon one of them, by delivering at the residence or place of business of the person on whom it is to be served or by mail, addressed to that person at his last known place of residence or place of business. But if the employer is a corporation, the notice must be served by delivering it to or mailing it addressed to the office or principal place of business of the corporation.

If served by mail, it is deemed to be served at the time when the letter containing it would be delivered in the ordinary course of the mail.

FORM No. 24**Notice of Claim to Employer**

(Under Labor Law, § 201.)

To (*Belgim Brothers, Inc.*):

Sirs:

PLEASE TAKE NOTICE that on the (8th) day of (*July*, 1916,) while in your employ and while engaged in the duties of my employment as (*a bookkeeper in the general bookkeeper's office on the 8th floor of your building No. 700 Seventh Avenue*,

To Employer by Administrator of Deceased Employee

in the Borough of Manhattan, City of New York,) and without carelessness or fault on my part, but solely through the negligence of yourselves and your (officers, directors and general superintendent) and your failure to provide a proper and safe place for me to work, I was (struck and) injured by (a heavy portion of plaster ceiling which fell from the ceiling on the 8th floor of your said building immediately above the desk at which I was at work. That the falling of said plaster was due to the soaking thereof by water which flowed from a water pipe on the 9th floor of said building during the night of July 7, 1916; that the leaking of the water and the soaking of the plaster was discovered by the night watchman and the loosened and dangerous condition of the ceiling plaster caused thereby was reported by him to the general superintendent of your building on the morning of July 8, 1916, and said superintendent failed to give warning to me of the dangerous condition of the ceiling above the desk where my duties required me to work.) That by reason of the accident above set forth and the negligence of (your officers and superintendent,) I received painful and serious injuries which consisted of (lacerations and abrasions of my face and a puncture of the eyeball of my right eye,) as the result of which I (have lost the sight of said eye) and have sustained damage in the sum of (\$15,000) which I hereby claim.

Dated, (*New York, September 10, 1916.*)

(*JOHN C. HARDIN.*)

FORM No. 25**Notice of Claim to Employer by Administrator**

(Under Labor Law, § 201.)

To:

(*Minkel Iron Company,*)
(*543 West 67th Street,*)
(*New York City.*)

Gentlemen:

YOU WILL PLEASE TAKE NOTICE that on the (8th) day of (*July, 1915*), the undersigned, (*Marie Carsten, widow of Harry Carsten,*) deceased, was appointed administratrix of the

To Employer — By Administrator

goods, chattels and credits which were of said deceased by the Surrogates' Court of (*New York*) County, said court being a court of competent jurisdiction and said county being the place where deceased resided at the time of his death, and letters of administration were duly issued to her on the (10th) day of (*June*, 1914); that pursuant to the provisions of the statute in such case made and provided the said (*Marie Carsten*) as such administratrix hereby serves upon you this notice in writing setting forth the facts upon which her cause of action is based as follows:

On the (5th) day of (*August*, 1914,) the said (*Harry Carsten*,) deceased, was in your employ as a (*payroll messenger*) at (*a new theatre which was in course of construction at 165th Street and Broadway, Borough of Manhattan, City of New York, and you as contractor for the iron and steel work of said building were engaged at that time in erecting the iron work in and about the construction of said building. The floor beams of said building were of iron or steel and the said building was complete to the roof upon which structural iron or steel work was being erected at the time aforesaid.*) In violation of that statute in such case made and provided, to wit, (*Section 20 of Chapter 693 of the Laws of 1911,*) you negligently and carelessly failed to (*thoroughly plank over the entire tier of iron or steel beams on which the structural iron or steel work was being erected*) and in violation of the statute in such case made and provided you maintained your works, ways and machinery in a dangerous, defective and improper condition in that you failed to comply with the provisions of the aforesaid statute, to wit, (*Section 20 of Chapter 693 of the Laws of 1911,*) and also negligently allowed and permitted (*the floors of said building and the beams thereof to be uncovered and unprotected,*) and in that while you (*were engaged in work in placing in position a derrick which was raised to a point at a great height above the tier of roof beams upon said building, upon the mast of said derrick was an appliance known as a "spider" which was insecurely and improperly fastened and negligently allowed and permitted to remain loose and the said mast was insecurely and defectively fastened. In the course of the work it was found necessary to adjust to said spider at the top of said boom a block through which a fall was to be operated and it was customary and usual for such blocks to be fastened in*

To Employer — By Administrator

position before the derrick is raised.) In this instance your (foreman or superintendent) unlawfully and negligently failed to (have said block in position,) but wrongfully, unlawfully and negligently directed (one Michael Hennessy, one of your employees, to climb said derrick boom or mast and to fasten a block to said spider,) negligently and carelessly failing to warn him of the (fact that the said derrick boom or mast was insecurely and defectively fastened and apt to sway and that the spider was loose and apt to turn with him,) by reason of all of which and (while the said Michael Hennessy,) acting upon the assurance of safety given by your (foreman or superintendent,) and following his instructions and obeying his directions, was (upon said mast or boom adjusting said block,) without fault on his part and solely through the negligent and unlawful acts of (your foreman and superintendent) as hereinbefore set forth, (the said boom or mast swayed and the said spider turned from its position, by reason of which the said Hennessy was thrown from his position and also caused to drop the block he was carrying which fell through the open floor beams a great distance to the ground floor of the theatre beneath where it struck said Harry Carsten,) deceased, who was then (entering a small frame temporary structure erected by you on said floor and used as a time keeper's office,) whereby he sustained severe injuries which caused his death; that said deceased was lawfully (upon said) premises in the performance of his duties at that time and was (entering the time keeper's office) in the regular course of his employment as directed by your (head book-keeper for the purpose of obtaining the time keeper's report;) that the injuries he then and there received were in no way due to fault or carelessness on his part but solely to the carelessness and negligence of your (foreman and superintendent) as aforesaid; that he left him surviving as his next of kin his widow, the undersigned, and one daughter, eleven years of age, that the said next of kin by reason of the premises have been damaged in the sum of (Twenty-five thousand (\$25,000)) Dollars.

Dated, (July 9, 1915.)

(MARIE CARSTEN),
Administratrix of the Estate of (Harry Carsten,) deceased.

SUMMONS

FORM No. 26

Summons

SUPREME COURT,
(*New York*) County.

(*JOHN JONES,*)

Plaintiff,

against

(*JOHN DOE and RICHARD ROE,*)

Defendants.

Trial desired in the
county of (*New
York*).

To the above-named defendants and each of them:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, (*June 4th, 1916.*)

(*WILLIAM REILLY,*)

Plaintiff's Attorney.

Office and Post-Office Address, (*No. 52 William Street,*) (*Borough of Manhattan,*) (*City of New York*).

If the action is one mentioned in section 420, C. C. P., and complaint does not accompany summons, it is desirable that a notice be served with the summons to the effect that in default of appearance judgment for a specified amount will be taken. The giving of this notice expedites the entry of judgment upon default. The following is the form of notice:

"Take notice, that upon your failure to appear herein, judgment will be taken against you for (One Thousand (\$1,000)

Indorsements. Filing — New York and Bronx

Dollars), with interest from the (1st) day of (*February*, 1916) together with the costs of this action."

(*THEODORE WILLIAMS*),

Plaintiff's Attorney,

Office and P. O. Address,

(*No. 11 Wall Street,*)

(*Borough of Manhattan,*)

(*City of New York.*)

Before beginning action, where jurisdiction depends upon amount claimed, as to recovery of Costs, see § 3228, Code, subd. 5.

In matrimonial actions. (§ 1774, C. C. P.)

If the action is for an absolute divorce, there should be written upon the face of the summons the words

"ACTION FOR A DIVORCE."

If the action is for a separation, there should be written upon the face of the summons the words

"ACTION FOR A SEPARATION."

If the action is one to annul a marriage, there should be written upon the face of the summons the words

"ACTION TO ANNUL A MARRIAGE."

In statutory action. (§ 1897; 1962 C. C. P.) (See also *Waits N. Y. Practice*, Vol. 2, p. 1263.)

If the action is one to recover a penalty, and the complaint is not served with the summons, a general reference to the statute must be indorsed upon the copy of the summons delivered to the defendant; such notice should be in the following form:

"According to the provisions of section (1), chapter (322), of the Laws of (1895) of the State of New York, entitled ('*An Act to prevent burning of soft coal in factories in the city of Brooklyn*')."

As to summons generally and its form, see *Abbott's Practice and Forms*, 2nd Ed., Vol. 1, p. 622; *Nichols N. Y. Practice*, Vol. 1, § 696 et seq. and *Waits N. Y. Practice*, 2nd Ed., Vol. 2 P. 1247 et seq.

Filing — New York and Bronx Counties

In Supreme Court, New York and Bronx Counties and County Court, Bronx County, the summons, writ or other original process, must be filed with proof of service thereof, within three days

Foreclosure

after service, in the office of the Clerk who has custody of the records of the Court in which the action is brought. The Clerk, upon receipt thereof, stamps the same upon its first page with a certain number to be one of the series for that year. This number is the County Clerk's Serial Number of the case for that year.

The attorney or party causing such summons, writ or original process to be served shall upon demand, give to the party so served or to his attorney, such serial number.

All papers in the action must bear the same County Clerk's Number for that year.

This County Clerk's Serial Number constitutes a part of the title of the action.

All other original papers in the action with proof or admission of service must be filed with or mailed to the Clerk who stamped the County Clerk's Serial Number on the summons, writ or other original process, not later than the day after their service. (§ 1245 (a), Code.)

The attorney causing a summons, writ or original process to be served must upon demand furnish to the party served or his attorney the County Clerk's Serial number of the case.

FORM No. 27

Notice of Object of Action with Notice of No Personal Claim —
Foreclosure

SUPREME COURT,
(*New York*) County.

(*JOHN JONES*),

Plaintiff,

against

(*JOHN DOE*), (*RICHARD ROE*)

and (*THOMAS WILLIAMS*),

Defendants.

To the above-named defendant, (*THOMAS WILLIAMS*):

TAKE NOTICE, that the object of this action, in which a summons is herewith served upon you, is to foreclose a mortgage executed by (*JOHN DOE*) to (*JOHN JONES*), dated the

* See also p. 735.

Foreclosure

(1st) day of (*July*, 1916), and recorded in the office of the (*Register*) of the County of (*New York*), in Liber No. (2) of (*Mortgages*), page (450), on the (1st) day of (*February*, 1916), at (9:30) o'clock (A. M.), to secure the payment of the sum of (One Thousand (\$1,000) Dollars, with interest thereon from the (1st) day of *February*, 1916.)

That the following is a brief description of the mortgaged premises (*here insert description of premises as contained in the complaint*);

TAKE FURTHER NOTICE, that no personal claim is made against you.

Dated, the (12th) day of (*July*, 1916.)

(*ROBERT JENSEN*,)

Plaintiff's Attorney,

Office and P. O. Address,

(*No. 11 Wall Street*,)

(*Borough of Manhattan*,)

(*City of New York*.)

LIS PENDENS : SERVICE ON INFANTS

This notice of pendency of action should be filed with the verified complaint. (Section 1670, Code Civ. Pro.)

This notice and the complaint may be filed before the service of the summons, in which case, within sixty days after filing, the service of the summons must be made or publication thereof begun. (Section 1670, Code of Civ. Pro., and see section 1631. See also *Abbott Prac. and Forms*, vol. I; p. 879; *Waits N. Y. Prac.*, 2d Ed., Vol. 2, p. 1277, et. seq.)

FORM No. 28

Notice of Pendency of Action

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i>),*	}
Plaintiff,	
against	
(<i>JOHN DOE</i>) and (<i>RICHARD ROE</i>),	
Defendants.	

NOTICE IS HEREBY GIVEN, that an action has commenced and is now pending in this court, upon a complaint of the above-named plaintiff against the above-named defendants for the (*purpose of obtaining a partition of the premises therein described, among the owners thereof, or for a sale thereof under the direction of this court, and for a division of the proceeds among such owners, according to their respective rights*).

That the premises in the County of (*New York*) affected by the said action were, at the time of the commencement thereof, and at the time of the filing of the complaint and this notice, situated in the (*12th Ward*) of the (*City and County of New York in the State of New York*) and are described as follows, to wit:

[Description]

* Name all the parties, plaintiff and defendant. See also p. 737.

 Order Designating Person to Receive

be the said several distances or dimensions, more or less, together with the building and appurtenances thereon.

Dated, (*New York, May 2, 1916*).

(*WILLIAM REILLY,*)

Plaintiff's Attorney.

Office and Post-Office Address, (*52 William Street, (New York City.)*)

The Clerk of the County of (*New York*) is directed to index this notice to the names of the defendants.

(*WILLIAM REILLY,*)

Plaintiff's Attorney.

FORM No. 29
Order Designating Party to Receive Service for an Infant

At a Special Term of the Supreme Court, (*Part II*) thereof, held in and for the County of (*New York*) at the County Court House in the (*Borough of Manhattan, City of New York,*) on the (*7th*) day of (*July, 1916.*)

Present:

Hon. (*JOHN W. GOFF*),
Justice.

(*GEORGE GRAY, EDWIN GRAY, HELEN G. SUMNER,*) formerly (*HELEN W. GRAY*) and (*HOWARD GRAY,*) as executors and trustees under the last Will and Testament and Codicils thereto of (*JOHN GRAY,*) deceased,

Plaintiffs,

against

(*GEORGE GRAY,*) individually, etc.,
et al.,

Defendants.

It appearing by the petition of (*David H. Thomas*) that (*Grace Gray, Edith Darwin, Anthony Darwin,*) necessary parties de-

Designation of Person — Petition

fendant in the above-entitled action are all infants under the age of fourteen (14) years, it is

ORDERED that a copy of the summons in this action be delivered to and left with (*Robert Ray, Esq.*) counselor-at-law of (27 *Cedar street*) in the (*City of New York*) in behalf of the said infants, and that service of the said summons shall not be deemed complete until such delivery.

Enter

(*J. W. G.*.)

J. S. C.

FORM No. 30

**Petition for Designation of Person to Receive Service on Behalf of
an Infant**

SUPREME COURT,
(*New York*) County.

(*GEORGE GRAY et al., as executors
and trustees, etc.,*)

Plaintiffs,

against

(*GEORGE GRAY, individually, etc.,
et al.,*)

Defendants.

To the Supreme Court, County of (*New York*):

The petition of (*David H. Thomas*) respectfully shows to this court:

That he is a member of the firm of (*Thomas, Wingate & Bell*), attorneys for the plaintiffs in the above-entitled action.

That this action is brought (*for the judicial settlement of the account of the plaintiffs as executors and trustees of the Will and Codicils thereto of John Gray, deceased*).

That the defendant (*Grace Gray*), above named is (*the daughter of George Gray, a son of decedent*), and is a necessary and proper party defendant in this action, for the reason that (*she has a vested remainder interest in and to the estate of said decedent, pursuant to his last Will and Testament and Codicils*

Designation of Person — Petition

thereto;) that said defendant is an infant under the age of fourteen years, and resides with (*her father, George Gray,*) at (*Lakewood, New Jersey,*) and that there has been appointed for her no general or testamentary guardian, or guardian *ad litem*.

That the defendant, (*Edith Darwin,*) above named, is the (*daughter of Marjorie C. Darwin, a daughter of George Gray, a son of decedent,*) and is a necessary and proper party defendant in this action, for the reason that (*she has a contingent interest in and to the estate of said decedent, pursuant to his last Will and Testament and Codicils thereto;*) that the said defendant is an infant under the age of fourteen years and resides with (*her mother, Marjorie C. Darwin, at Lakewood, New Jersey,*) and that there has been appointed for her no general or testamentary guardian, or guardian *ad litem*.

That the defendant, (*Anthony Darwin, 2nd,*) above named, is (*the son of Marjorie C. Darwin, a daughter of George Gray, a son of decedent,*) and is a necessary and proper party defendant in this action, for the reason that (*he has a contingent interest in and to the estate of said decedent, pursuant to his last Will and Testament and Codicils thereto;*) that the said defendant is an infant under the age of fourteen years and resides with (*his mother, Marjorie C. Darwin, at Lakewood, New Jersey,*) and that there has been appointed for him no general or testamentary guardian, or guardian *ad litem*. That no previous application for this order has been made.

Wherefore, your petitioner prays that there be appointed a suitable person on behalf of the defendants, (*Grace Gray, Edith Darwin and Anthony Darwin, 2nd*) to accept service of a copy of the summons and complaint in the above-entitled action.

Dated, (*New York, July 5, 1916.*)

(*DAVID H. THOMAS.*)

(Verification.)

GUARDIAN AD LITEM

FORM No. 31

Order Appointing Guardian Ad Litem — Infant Plaintiff Under Fourteen

At a Special Term of the Supreme Court (*Part II thereof*), held in and for the County of (*New York*), at the County Court House in (*the Borough of Manhattan, City of New York*), on the (*24th*) day of (*July, 1916.*)

Present:

Hon. (*CHARLES L. GUY*),
Justice.

In the Matter of the Application
of
(*FRANK CARR*) for the appointment of a Guardian *ad litem* for
(*MARY CARR*), an infant
under the age of fourteen years.

On reading and filing the annexed petition, consent and affidavit of (*Frank Carr*), duly verified the (*21st*) day of (*July, 1916*) and the Court being satisfied of the truth of the facts therein alleged, and after hearing (*David Geer*,) Esq., attorney for the infant, (*Mary Carr*,) and for her (*father, Frank Carr*,) it is

ORDERED that (*Frank Carr*) be and he hereby is appointed Guardian *ad Litem* for the infant (*Mary Carr*) above-named, and authorized to prosecute for her as such Guardian *ad Litem* the action mentioned in the annexed petition.

Enter,
(*C. L. G.*,)
J. S. C.

FORM No. 32

Petition for Guardian Ad Litem — Infant Plaintiff Under Fourteen
SUPREME COURT,
(*New York*) County.

In the Matter of the Application
of
(*FRANK CARR*) for the appoint-
ment of a Guardian *ad Litem*.

To the Supreme Court, (*New York*) County:

The petition of (*Frank Carr*) respectfully shows to this Court:

1. That your petitioner is the (*father*) of (*Mary Carr*), who is (*seven*) years of age and who resides with (*her parents*) at (*No. 277 East 37th Street in the Borough of Manhattan, City of New York,*) and that no General or Testamentary Guardian has been appointed for her pursuant to law.

2. (*That on the 16th day of July, 1916, at about 8:30 P. M., while the infant herein was lawfully crossing Fifth Avenue at 37th Street, in the Borough of Manhattan, City of New York, going from the northwest to the northeast side of the street, an automobile bearing license number 79864-N. Y. and owned by one John Ray and operated by one William Vale whose chauffeur's license number is 18-458, was so carelessly and negligently driven that same collided with, precipitated said infant to the ground and ran over her, causing her to sustain severe personal injuries.*)

3. That your petitioner who resides at (*277 East 37th Street in the Borough of Manhattan, City of New York,*) is the (*father*) of the infant herein and is worth at least the sum of two hundred and fifty (\$250.00) dollars, over and above all just debts and liabilities and is a competent and responsible person to become the Guardian of the infant herein in such action as hereto annexed.

Wherefore, your petitioner prays that he be appointed Guardian *ad Litem* of said infant to bring such action for (*her*) for which order no previous application has been made.

Dated, (*New York, July 21, 1916.*)

(*FRANK CARR*),
Petitioner.

Infant Plaintiff — Under 14 — Consent

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*FRANK CARR*), being duly sworn, says that he is the petitioner named in the foregoing petition; he has read the said petition and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*FRANK CARR*).

Sworn to before me, this }
 (21st) day of (*July*, 1916. }
 (*THOMAS JOHNS*),
 Notary Public,
 (*N. Y.*) County.

I hereby consent to become the Guardian *ad Litem* of (*Mary Carr*) to bring the action herein referred to.

(*FRANK CARR*).

STATE OF NEW YORK }
 County of (*New York*), } ss.:

On this (21st) day of (*July*, 1916) before me personally appeared (*Frank Carr*), to me known and known to me to be the individual described in and who executed the foregoing consent and he duly acknowledged to me that he executed the same.

(*THOMAS JOHNS*),
 Notary Public,
 (*New York*) County.

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*FRANK CARR*), being duly sworn, deposes and says; that he resides at (*No. 277 East 37th Street, in the Borough of Manhattan, City of New York*;) that he is the (*father*) of the above-named infant and is fully competent to understand and protect the rights of said infant, and has no interest adverse to that of said infant, and is not connected in business with the attorney or counsel of the adverse parties, or any of them. That he is of sufficient financial ability to answer to the said infant for any damages which may be sustained by his carelessness or negligence in the prosecution of such suit, and is worth at least two hundred

 Infant Plaintiff — Over 14 — Order

and fifty (\$250.00) dollars, consisting of cash and household effects, over and above all his debts and liabilities and besides property exempt by law from execution.

Sworn to before me, this }
 (21st) day of (July, 1916.) } (FRANK CARR).
 (THOMAS JOHNS),
 Notary Public,
 (New York) County.

 FORM No. 33

 Order Appointing Guardian Ad Litem — Infant Plaintiff Over
 Fourteen

At a Special Term (*Part II*) of the Supreme Court, held
 in and for the County of (*New York*), at the County
 Court House, (*Borough of Manhattan, City of New*
York), on the (15th) day of *August*, 1916.

Hon. (*IRVING LEHMAN*),
 Justice.

In the Matter of the Application for
 the appointment of a Guardian *ad*
Litem

of

(*MARY SAMPSON*),
 An Infant over the age of fourteen
 years.

Upon reading and filing the annexed petition, affidavit, consent, and on motion of (*Charles Connor*), attorney for petitioner, it is

ORDERED, that (*Richard Kilian*) be and (*he*) hereby is appointed the guardian *ad litem* of (*Mary Sampson*), an infant, for the purpose of instituting and prosecuting an action in this Court, in behalf of said infant, to recover (*damages for personal injuries occasioned through negligence*) upon the cause of action set forth in annexed petition.

Enter,
 (*I. L.*),
 J. S. C.

FORM No. 34

Petition for Appointment as Guardian Ad Litem — by Infant Plaintiff Over Fourteen

SUPREME COURT,
(*New York*) County.In the Matter of the Application for
the appointment of a Guardian *ad*
Litem

of

(MARY SAMPSON),
An Infant over the age of fourteen
years.

To the Supreme Court of the State of New York:

The petition of (*Mary Sampson*) respectfully shows to the Court:

I. That your petitioner (*Mary Sampson*), is an infant over the age of fourteen years, residing with (*Ida Sampson*, her mother,) at (*No. 702 West 180th Street, Borough of Manhattan, New York City.*)

II. That (*she*) has a good and substantial cause of action (*for damages for personal injuries sustained on or about the (10th) day of (July, 1916), by reason of (being struck by an iron rivet which fell upon petitioner from the elevated railroad structure on Columbus Avenue, Borough of Manhattan, City of New York, while petitioner was crossing said avenue at its junction with Broadway, said rivet being allowed to fall by workmen engaged in erecting a third track upon said elevated structure and being then in the employ of the Steele Construction Company, without any fault on her part, and through the negligence of said Steele Construction Company and its agents, servants and employees.*)

III. That (*Richard Kilian*) is a responsible and competent party to become the guardian *ad litem* of said infant, as will more particularly appear by (*his*) affidavit hereto annexed.

IV. That no previous application has been made for the appointment of a guardian *ad litem* herein, (*except that an application was made to this Court by Ida Sampson, mother of petitioner, for her appointment as guardian ad litem of petitioner,*

and said application was denied upon the ground that the petition should have been made by petitioner, she being over fourteen years of age, and not by her mother.)

Wherefore, your petitioner respectfully prays this Honorable Court, for an order appointing (*Richard Kilian*) guardian *ad litem* of (*Mary Sampson*) and authorizing and empowering (*him*) to bring and prosecute an action as such guardian *ad litem* on behalf of said infant against said defendant (*to recover damages for the said injuries.*)

Dated, (*August 12, 1916.*)

(*MARY SAMPSON*),
Petitioner.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*MARY SAMPSON*.) being duly sworn, deposes and says: that (*s*)he is the petitioner above named; that (*s*)he has read the foregoing petition and knows the contents thereof; that the same is true to h(*er*) own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters (*s*)he believes it to be true.

(*MARY SAMPSON.*)

Sworn to before me, this }
(*12th*) day of (*August, 1916.*) }

(*JAMES ALLEN*),
(*Commissioner of Deeds,*)
(*City of New York.*)

I hereby consent to become the guardian *ad litem* of (*Mary Sampson*.) an infant (*over the age of fourteen years*).

Dated, (*August 12, 1916.*)

(*RICHARD KILIAN.*)

STATE OF NEW YORK, }
(*City of New York*), } ss.:

On this (*12th*) day of (*August, 1916*), before me personally came the above named (*Richard Kilian*), to me known and known to me to be the person described in and who executed the foregoing consent, and he duly acknowledged to me that he executed the same.

(*JAMES ALLEN*),
Commissioner of Deeds,
(*City of New York.*)

STATE OF NEW YORK, }
 (City of New York,) } ss.:

(*RICHARD KILIAN*,) being duly sworn, deposes and says: that he is the (*uncle*) of (*Mary Sampson*,) an infant, (*over*) fourteen years of age, who resides with (*her mother at 702 West 180th Street*) in (*the Borough of Manhattan, City of New York*,) that he is responsible and fully competent to understand and protect the rights of said infant; that your deponent has no interests adverse to the said infant, and is not connected in business with the attorney or counsel of the adverse party or either of them, and that he is worth two hundred and fifty dollars over and above all debts and liabilities and property exempt by law and levy and sale on execution.

(*RICHARD KILIAN*.)

Sworn to before me, this
 (12th) day of (*August*, 1916.)

(*JAMES ALLEN*,)
 (Commissioner of Deeds,
 (City of New York.)

FORM No. 35

Notice of Application for Appointment of Guardian Ad Litem for
 Resident Infant Defendants Over Fourteen — Foreclosure

SUPREME COURT,
 (New York) County.

(<i>EDWIN BALL</i> ,)	} Plaintiff,
against	
(<i>CHARLES CARVER, CORA CARVER, DORA CARVER, and others</i> ,)	
Defendants.	

PLEASE TAKE NOTICE that upon the petition of (*Edwin Ball*,) verified (*March 14*, 1916,) a copy of which is hereto annexed, application will be made to this Court, at a Special Term, (*Part I*) thereof, appointed to be held at the County Court

Infant Defendant — Foreclosure — Petition

House, in (*the Borough of Manhattan, City*) and County of (*New York,*) on Monday, the (*25th*) day of (*March, 1916,*) at (*10:30*) o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order appointing some competent and suitable person guardian *ad litem* of the above-named infant defendants, (*Cora Carver and Dora Carver,*) and directing him to appear and defend this action, in their behalf, and for such other and further relief as may be just.

Dated, (*March 14, 1916.*)

Yours, etc.,

(*BALL & BLACK*),

Attorneys for Plaintiff,

(*30 Nassau Street,*)

(*Manhattan Borough,*)

(*New York City.*)

To *[The Knickerbocker Trust Co., General Guardian of said infant defendants, Cora Carver and Dora Carver,] and (*Anna Carver, mother*) of the infant defendants, (*Cora Carver and Dora Carver,*) with whom they severally reside.

FORM No. 36

**Petition for Application for Appointment of Guardian Ad Litem
for Resident Infant Defendant Over Fourteen — Foreclosure**

SUPREME COURT,
(*New York*) County.

(*EDWIN BALL,*)

Plaintiff,

against

(*CHARLES CARVER, CORA CAR-
VER, DORA CARVER, and others,*)

Defendants.

To the Supreme Court, (*New York*) County.

The petition of (*Edwin Ball*) respectfully shows:

I. That he is the plaintiff in the above-entitled action and one of the firm of (*Ball & Black,*) plaintiff's attorneys.

* Notice must be given to the General or Testamentary Guardian of the infant, if he has one, and to the infant himself. As to method of serving notice on infant, see § 426 C. C. P.

Infant Defendants — Foreclosure — Petition

II. That this action is brought to (*foreclose a mortgage upon certain real estate situate in the Borough of Manhattan, City, County and State of New York.*)

III. That the above-named defendants, (*Cora Carver and Dora Carver,*) were duly personally served with the summons and complaint in the above-entitled action more than (*twenty*) days since. That each of said defendants is an infant over the age of fourteen years, as deponent is informed and verily believes.

IV. That all of said infant defendants reside with their (*mother, Anna Carver, on Serpentine Road, Rochelle Park, New Rochelle, N. Y.,*) and none of said infants [has, to the best of deponent's knowledge and information, a general or testamentary guardian in this State.]

V. That no guardian *ad Litem* has been appointed herein to appear and defend this action in behalf of said infants, or any of them.

VI. That no previous application has ever been made herein for an order appointing a guardian *ad Litem* for any of said infants.

WHEREFORE said plaintiff prays that some competent and suitable person be appointed guardian *ad Litem* for said infant defendants, and be authorized and directed to appear and defend this action, in their behalf, and for such other and further relief as may be just.

Dated, (*March 14, 1916.*)

(*EDWIN BALL*),
Petitioner.

(*Ball & Black*),
Attorneys for Plaintiff,
(*No. 30 Nassau Street,*)
(*Manhattan Borough,*)
(*New York City.*)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*EDWIN BALL*), being duly sworn, says: That he is the petitioner herein; that he has read the foregoing petition and knows the contents thereof; the same is true to his own knowledge,

 Infant Defendants — Foreclosure — Consent

except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes it to be true.

(EDWIN BALL),

Sworn to before me, this }
(14th day of (March, 1916.)) }

(LUCY JUDSON),

Notary Public, No. (29)

(New York) County.

* CONSENT OF GUARDIAN *ad Litem* AND AFFIDAVIT OF ABILITY
TO ANSWER

I hereby consent to become the Guardian *ad Litem* of the infant defendants (*Cora Carver and Dora Carver*,) in the above-entitled action.

Dated, (March 15, 1916.)

(JOSEPH T. BRONSON).

STATE OF NEW YORK, }
County of (New York), } ss.:

On this (15th) day of (March, 1916) before me personally came (JOSEPH T. BRONSON), to me known and known to me to be the same person described in and who executed the foregoing consent and he duly acknowledged to me that he executed the same.

(LUCY JUDSON),

Notary Public, No. (29),

(New York) County.

STATE OF NEW YORK, }
County of (New York), } ss.:

(JOSEPH T. BRONSON), being duly sworn, says:

That he resides in (New Rochelle, Westchester County, State of New York). That he is an Attorney and Counsellor at Law of this Court, and is fully competent to understand and protect the rights of (*Cora Carver and Dora Carver*,) the infant defendants above named and has no interest adverse to that of said infants or any of them, and is not connected in business with the attorneys or counsellors of the adverse parties or any of them, or of any co-defendants having an interest adverse to that of

* To be attached to order of appointment when submitted for signature.

said infants. That he is of sufficient ability to answer to the said infants for any damages which may be sustained by his negligence or misconduct in defense of this suit, and is worth over (*Two Thousand Dollars*) over and above all his debts and liabilities, and besides property exempt by law from execution, (*and that his property consists of stock and cash in Trust Company*).

Sworn to before me, this } (JOSEPH T. BRONSON),
(15th) day of (March, 1916.) }
(LUCY JUDSON),
Notary Public, No. (29),
(New York) County.

***Order Appointing Guardian Ad Litem for Resident Infant Defendants Over Fourteen — Foreclosure**

At a Special Term, (*Part I*.) of the Supreme Court held in and for the County of (*New York*) at the County Court House, (*Borough of Manhattan, City of New York*.) on the (*25th*) day of (*March, 1916.*)

Hon. (JOSEPH E. NEWBURGER),
Justice.

(*EDWIN BALL*),
Plaintiff,
against

(CHARLES CARVER, and others,)
Defendants.

On reading and filing the petition of (*Edwin Ball*,) verified (*March 14, 1916*) for the appointment of some competent and suitable person as Guardian *ad Litem* for the infant defendants, (*Cora Carver and Dora Carver*,) together with proof of service

* The guardian *ad litem* cannot receive any property until he gives a bond to the infant in such penalty as the court directs, not less than twice the value of the property to be received as prescribed by § 475, Code.

Infant Defendants — Partition — Notice

of due notice of application for this order on (*Anna Carver, the mother*) of the said infant defendants, she being the person with whom (*they severally*) reside; and upon said infants personally and on the (*Knickerbocker Trust Company, General Guardian*) of said infants,

AND after hearing (*Stone & Avery,*) Counsel for the (*Knickerbocker Trust Company, the General Guardian*) of the said infants;

AND the Court having nominated (*Joseph T. Bronson*), to be Guardian *ad Litem* herein for said infant defendants;

NOW upon reading and filing the annexed consent of the said (*Joseph T. Bronson,*) duly acknowledged and proof by his affidavit verified (*March 15, 1916,*) that said (*Joseph T. Bronson*) is a competent and responsible person;

AND on motion of (*Ball & Black,*) Plaintiff's Attorneys, .

IT IS ORDERED that (*Joseph T. Bronson,*) be and he hereby is appointed Guardian *ad Litem* for the infant defendants (*Cora and Dora Carver,*) and authorized and directed to appear and defend this action in their behalf.

Enter,

(*J. E. N.*)

J. S. C.

FORM No. 38

***Notice to Guardian of Application for the Appointment of Guardian
Ad Litem for Resident Infant Defendant Under
Fourteen — Partition**

SUPREME COURT,
(*New York*) County.

(*JOHN DOE,*)

Plaintiff,

against

(*RICHARD ROE*) and (*WILLIAM
SMITH,*) an infant under the age
of fourteen years,

Defendants.

PLEASE TAKE NOTICE, that upon the annexed petition of (*Allen Peters*), verified the (*15th*) day of (*August, 1915*) an application will be made to this Court at Special Term, (*Part I*)

Infant Defendants — Partition — Petition

thereof to be held at the County Court House in (*the Borough of Manhattan, City of New York*) on the (21st) day of (*August*, 1915) at (10:30) A. M. or as soon thereafter as counsel can be heard for an order appointing a proper and suitable person as guardian *ad litem* of (*William Smith*,) the infant defendant above named, directing him to appear and defend the action in behalf of said infant.

Dated, (*New York, August 17, 1915.*)

(*ALLEN PETERS*),

Attorney for Plaintiff,

(*35 Nassau Street*),

(*New York City*).

To

*(*Olive Smith*,) General (or Testamentary)

Guardian of (*William Smith*),]

(*Frank Smith, father of William Smith*,)

(*12 West 42nd Street*,)

(*New York City*.)

(*James Wilson*,) the person designated by order made by Mr. Justice (*Lehman*) and entered in the office of the Clerk of (*New York*) County on (*August 2, 1915*,) upon whom process should be served in this action on behalf of said infant.

FORM No. 39

Petition for Appointment of Guardian Ad Litem for Resident Infant
Defendants Under Fourteen — In Partition

SUPREME COURT,

(*New York*) County.

(*JOHN DOE*,)

Plaintiff,

against

(*RICHARD ROE*) and (*WILLIAM SMITH*,) an infant under the age of fourteen years,

Defendants.

To the Supreme Court of the State of New York:

The petition of (*Allen Peters*) shows:

First: That he is the attorney for the plaintiff in this action,

* Notice must be given to the General or Testamentary Guardian of the infant, if he has one within this State; or if he has none, and is within this State, to the person with whom he resides, § 471, Code.

Infant Defendants — Partition — Petition

which is brought for the partition of lands in the County of (*New York*,) described in the complaint, or a sale thereof if partition cannot be had.

Second: The summons and complaint herein were duly filed in the office of the Clerk of the County of (*New York*) on the (10th) day of (*June*, 1915,) and (*the amended summons and complaint herein were duly filed in said clerk's office on the 21st day of June*, 1915.)

Third: That the defendant, (*William Smith*), is an infant of (*three*) years of age on the (20th) day of (*December*, 1914,) and that due personal service of the summons within the State was made upon said infant by delivering a true copy of same to his (*father, Frank Smith*,) on the (10th) day of (*August*, 1915,) as appears by the affidavit of service made by (*James Dunn*,) verified the (11th) day of (*August*, 1915,) and heretofore filed herein.

That this court in the interest of said defendant, (*William Smith*,) made an order dated the (2d) day of (*August*, 1915,) requiring that a copy of the summons in this action be also delivered in behalf of said infant defendant to (*James Wilson*,) designated in said order, and that on the (11th) day of (*August*, 1915,) service as provided in said order was made on said (*James Wilson*) as appears by the affidavit of service of (*James Dunn*,) verified the (12th) day of (*August*, 1915,) and hereto filed herein.

Fourth: That the approximate value of the interest of said infant defendant (*William Smith*,) is (*ten thousand five hundred*) dollars.

Fifth: That said infant defendant now resides with his (*father, Frank Smith*,) at (*No. 42 West 42d Street in the Borough of Manhattan, City of New York*,) and [has not, to the best of the knowledge and information of this deponent, any general or testamentary guardian in this State.]

Sixth: That no previous application, by any person, on behalf of said infant, for the appointment of a guardian *ad litem* has been made.

WHEREFORE, the plaintiff asks that some competent and suitable person be appointed guardian *ad litem* for said defend-

Infant Defendants — Partition — Petition

ant (*William Smith*,) and be authorized and directed to appear and defend this action in his interest and behalf, and for such other and further relief as may to the Court seem just and proper.

Dated, (*New York*, *August 15*, 1915.)

(*ALLEN PETERS*,)

Petitioner.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*Allen Peters*,) being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof; that the same is true to the knowledge of deponent, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

(*ALLEN PETERS*.)

Sworn to before me, this }
(15th) day of (*August*, 1915.) }

(*HARRY BEDELL*,)

Notary Public,

(*New York*) County.

FORM. No. 40

***Order Appointing Guardian Ad Litem for Resident Infant Defendants Under Fourteen — In Partition**

At a Special Term, (*Part I*), of the Supreme Court of the State of New York, held in and for the County of (*New York*), at the County Court House, in (*the Borough of Manhattan, City of New York*), on the (*1st*) day of (*September, 1915*).

PRESENT:

Hon. (*EDWARD C. WHITAKER*),
Justice.

(<i>JOHN DOE</i>),	}
Plaintiff,	
against	
(<i>RICHARD ROE</i>) and (<i>WILLIAM SMITH</i>), an infant under the age of fourteen years,	
Defendants.	

On reading and filing the petition of (*Allen Peters*), verified the (*15th*) day of (*August, 1915*), and the papers thereto annexed, and upon the summons and complaint (*and amended summons and complaint*) filed in the office of the Clerk of the County of (*New York*) on the (*10th*) day of (*June, 1915*), (*and the 21st day of June, 1915, respectively*), whereby it appears, among other things, that this action is brought for the purpose of obtaining partition of certain real property and premises situated in (*the Borough of Manhattan, City, County and State of New York*), for the sale thereof, and a division of the proceeds of such sale among the owners thereof, according to their rights; for an adjudication of the rights of the parties to this action in the said real property and premises, and for an adjudication that only the defendant (*Richard Roe*) have any right, title or interest or lawful claim in and to said real property, or any part thereof, as more

* The guardian ad litem must, before he enters upon the execution of his duties, file a bond to the People of this State in a sum fixed by the Court in the form prescribed by § 1536, Code, even though he is the general guardian of the infant.

Infant Defendants — Partition — Order

fully set forth in said complaint; that the defendant, (*William Smith*,) is an infant under the age of fourteen years, and is a resident of the State of New York; together with proof of service of due notice of the application for this order upon (*Frank Smith, the father*) of said infant, with whom he resides and upon (*James Wilson*,) the person duly designated by an order heretofore made herein, on whom process should be served in this action upon behalf of said infant;

And the Court having nominated (*Charles E. Hewson*) to be Guardian *ad litem* for said infant defendant,

NOW upon reading and filing the annexed consent of (*Charles E. Hewson*,) duly acknowledged, and proof by his affidavit, also hereto annexed, that he is a competent and responsible person;

And upon motion of (*Allen Peters*,) attorney for the plaintiff,

IT IS ORDERED, that the said (*Charles E. Hewson*) be, and he hereby is, appointed Guardian *ad litem* for the said infant defendant, (*William Smith*,) for the purposes of this action, and authorized to appear and defend this action for the said infant defendant as such Guardian *ad litem* upon his filing a bond to the People of the State of New York in due form of law in the penal sum of (*one thousand*) dollars executed by him, with one sufficient surety, to be approved by the Court, or a Justice.

Enter,

(*E. C. W.*)

J. S. C.

Order Appointing Conditionally — Partition

FORM No. 41

Order Appointing Guardian Ad Litem for Nonresident Infant
Defendants Conditionally — In Partition

At a Special Term, (*Part II*,) of the Supreme Court of the State of New York, held in and for the County of (*New York*,) at the County Court House (*therein*,) on the (1st) day of (*September*, 1909.)

PRESENT:

Hon. (*EDWARD B. AMEND*,)

Justice.

(*JOSEPHINE W. TAYLOR*,)

Plaintiff,

against

(*ALICE W. EMMET*,) [full names of
all parties defendant should be set
forth],

Defendants.

On reading and filing the affidavit of (*John F. Charlton*,) verified the (1st) day of (*September*, 1909,) and the papers thereto annexed, and upon the summons and complaint filed in the office of the Clerk of the County of (*New York*,) on the (4th) day of (*August*, 1909,) whereby it appears, among other things, that this action is brought for the purpose of obtaining partition of certain real property and premises situated in (*the Borough of Manhattan, City*,) County and State of New York, or for the sale thereof, and a division of the proceeds of such sale among the owners thereof, according to their rights; for an adjudication of the rights of the several parties to this action in the said real property and premises, (*and for an adjudication that a certain instrument, dated October 26th, 1903, purporting to be the Last Will and Testament of Caroline E. Johnson, deceased, and containing an alleged devise of said real property, is void and of no effect, and that the same be set aside*,) and for an adjudication that none of the defendants, other than the defendants (*Alice W. Emmet and Fanny L. Johnson*) have, or has either of them, any right, title or interest or lawful claim in and to said real property, or any part

Order Appointing Conditionally — Partition

thereof, as more fully set forth in said complaint; that the defendants [name them], are infants under the age of twenty-one years, and are non-residents of the State of New York, but reside without the State of New York, in the (*State of Massachusetts*,) as more fully set forth in said affidavit of (*John F. Charlton*,) and have no general or testamentary guardian within this State:

And on reading and filing the consent of (*Richard M. Martin*,) Esq., duly acknowledged, and his affidavit, duly verified, whereby it appears, among other things, that he is an attorney and counsellor of this court, fully competent to understand and protect the rights of said infant defendants, and has no interest adverse to that of the said infants, and is not connected in business with the attorneys or counsel of any of the parties to this action, and is of sufficient ability to answer to the said infant defendants for any damages sustained by his negligence or misconduct of this action;

Now, on motion of (*Strong & Cadwalader*,) attorneys for the plaintiff, it is

ORDERED, that (*Richard M. Martin*,) Esq., an attorney and counsellor-at-law, be, and hereby is, designated as guardian *ad litem* for each of the said infant defendants, [name them] unless the said infant defendants, or someone in their behalf, procure such a guardian to be appointed, as prescribed by sections 471 and 472 of the Code of Civil Procedure, within ten days after the deposit in the post-office of the (*City of New York*) and service of copies of this order, as hereinafter directed; and it is

FURTHER ORDERED, that service of this order may be made upon each of the said infant defendants respectively by depositing a copy thereof in the (*general*) post-office in the (*Borough of Manhattan, City of New York*,) contained in a securely closed post-paid wrapper and directed respectively to the said infant defendants at their respective places of residence, to wit: [set forth specifically the addresses to which the order is to be sent by mail], and that a copy of this order be served within the State personally upon the said (*Richard M. Martin*,) Esq., hereby appointed guardian *ad litem* of said infant defendants.

Enter,

(*E. B. A.*,)

J. S. C.

Conditional Appointment — Partition — Consent

FORM No. 42***Consent and Affidavit of Guardian Ad Litem**

SUPREME COURT,
(*New York*) County.

(*JOSEPHINE W. TAYLOR,*)

Plaintiff,

against

(*ALICE W. EMMET, and others,*)

Defendants.

I hereby consent to become guardian *ad litem* of [name them],
infant defendants in the above-entitled action.

Dated, (*New York, September 2, 1909.*)

(*RICHARD M. MARTIN.*)

STATE OF NEW YORK, }
(*City and*) County of (*New York,*) } ss.:

On this (*2nd*) day of (*September, 1909,*) before me personally
came (*Richard M. Martin,*) to me known and known to me to be
the person who executed the foregoing consent, and duly acknowl-
edged that he executed the same.

(*B. L. PLATT,*)

(*Commissioner of Deeds,*)

(*City of New York.*)

STATE OF NEW YORK, }
(*City and*) County of (*New York,*) } ss.:

(*Richard M. Martin,*) being duly sworn, says: That he resides
at (*21 East 16th Street, Flatbush, Borough of Brooklyn, City of
New York,*) and is an attorney and counsellor of this court, and
is fully competent to protect the rights of [name them], the
infant defendants above named; that he has no interest adverse to
that of any of said infants, and is not connected in business with
the attorneys or counsel of any of the parties to this action, and is
of sufficient ability to answer to the said infant defendants and
each of them for any damage which may be sustained by his

* To be attached to order of appointment when submitted for signature.

Conditional Appointment — Partition — Affidavit

negligence or misconduct in the defense of this action, and is worth the sum of (*one thousand*) dollars over and above all debts and liabilities, besides property exempt by law from execution.

(*RICHARD M. MARTIN.*)

Sworn to before me, this }
(2nd) day of (*September, 1909.*) }

(*B. L. PLATT,*)
(*Commissioner of Deeds,*)
(*City of New York.*)

FORM No. 43

**Affidavit on Application for Conditional Appointment of Guardian
Ad Litem for Nonresident Infant Defendants — In Partition**

SUPREME COURT,
(*New York*) County.

(*JOSEPHINE W. TAYLOR,*)
Plaintiff,

against

(*ALICE W. EMMET and others,*)
Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN F. CHARLTON,*) being duly sworn, deposes and says that: he is an attorney and counsellor-at-law, and (*managing clerk in the office of Strong & Cadwalader,*) attorneys for the plaintiff in the above-entitled action, which is brought for the purpose of obtaining a partition of certain real property and premises situated in the (*Borough of Manhattan, City,*) County and State of New York, or for sale thereof and a division of the proceeds of such sale among the owners thereof, according to their rights; for an adjudication of the rights and interest of the several parties to this action in the said real property and premises; (*and for an adjudication that a certain instrument, dated October 26th, 1903, purporting to be the Last Will and Testament of Caroline E. Johnson, deceased, and containing an alleged devise of said real*

Conditional Appointment — Partition — Consent

property and premises, is void and of no effect, and that the same be set aside,) and for an adjudication that none of the defendants, other than the defendants (*Alice W. Emmet*) and (*Fanny L. Johnson*) have, or has any of them, any right, title, interest or lawful claim in and to said real property, or any part thereof.

That as deponent is informed and believes, and as appears by the duly verified complaint heretofore filed herein, and the affidavit of the plaintiff, verified the (24th) day of (*August*, 1909,) and of (*Arthur W. Andrews*), verified the (20th) day of (*August*, 1909,) and filed herein on the (31st) day of (*August*, 1909,) the defendants [name infant defendants,] are infants under the age of twenty-one years and are non-residents of the State of New York, but severally reside as follows: [name and residence of each infant defendant].

Deponent further says, on information and belief, that none of the said infants has any general or testamentary guardian within this State; that the interests of all of said infant defendants are (*contingent*), arising out of (*the devise contained in the said alleged Last Will and Testament of Caroline E. Johnson, deceased*), which is (*sought to be set aside*) by this action; and that the nature of their interests are identical, and that they can be properly represented in this action by one guardian *ad litem* appointed to appear for all of them.

Plaintiff therefore asks that this court make an order designating and appointing some suitable person to be guardian *ad litem* of each and all the above-named infant defendants for the purpose of this action, unless the said infants, or some one in their behalf, procure such guardian to be appointed as prescribed by sections 471 and 472 of the Code of Civil Procedure, within a specified time, after the service of a copy of said order to be stated therein, and that the court give special directions in said order respecting the service thereof.

That no other application herein for the appointment of a guardian *ad litem* for the said infant defendants has been made.

(*JOHN F. CHARLTON*.)

Sworn to before me, this }
(1st) day of (*September*, 1909.) }
(*HARRY M. AUSTIN*),

Notary Public,

(*Queens*) County.

(*Certificate filed in (New York) County*).

Conditional Appointment Made Absolute

FORM No. 44

**Affidavit on Application to Have Conditional Appointment of Guardian Ad Litem of Non-resident Infant Defendants Made Absolute
— In Partition**

SUPREME COURT,
(*New York*) County.

(JOSEPHINE W. TAYLOR,) }
Plaintiff, }
against }

(ALICE W. EMMETT and others,) }
Defendants. }

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(JOHN F. CHARLTON,) being duly sworn, says:

That he is an attorney and counsellor-at-law, (*and managing clerk in the office of Strong & Cadwalader,*) attorneys for the plaintiff in the above-entitled action.

That on the (*second*) day of (*September, 1909,*) the order of which a copy is hereto annexed, was duly entered and filed, together with the petition, consent, acknowledgment of consent and affidavit therein referred to in the office of the Clerk of the County of (*New York.*)

That on the (*third*) day of (*September, 1909,*) a copy of said order was duly served, pursuant thereto, upon the infant defendants [name them] by depositing a copy thereof in the general post-office in the (*Borough of Manhattan, City of New York,*) contained in a securely closed post-paid wrapper and directed respectively to the said infant defendants at their respective places of residence, according to the directions stated in said order, as more fully appears by the affidavit of (*Walter Langlotz,*) duly verified the (*eighth*) day of (*September, 1909,*) and hereto annexed; and that pursuant to the said order, a copy thereof was duly and personally served, within this State, upon (*Richard M. Martin,*) guardian *ad litem* of said infants, and more than double the time specified in the said order, to wit: more than (*twenty*) days have elapsed since the service of said order by mail upon the said infant

Conditional Appointment Made Absolute

defendants; and that neither of said infant defendants, nor any one or more of them, nor any person in their or either of their behalf, has procured or applied for the appointment of a guardian *ad litem* for said infant defendants, or either or any of them, as prescribed in Sections 471 and 472 of the Code of Civil Procedure, to the best of deponent's knowledge, information and belief.

That no previous application has been made for the order now asked for.

Plaintiff asks that an order be made making the order entered herein on the (2nd) day of (September, 1909,) appointing (Richard M. Martin) guardian *ad litem* of said infant defendants conditional absolute and that said (Richard M. Martin) be appointed guardian *ad litem* of said infant defendants for the purposes of this action and authorized to appear and defend this action for them as such Guardian *ad litem* upon his giving a bond with sufficient surety as required by law.

(JOHN F. CHARLTON.)

Sworn to before me, this (29th)

day of (September, 1909).

(HARRY HARVEY),

Notary Public,

(New York) County, No. (172).

Conditional Appointment Made Absolute

FORM No. 45

Order Making Conditional Appointment of Guardian Ad Litem for
Non-resident Infant Defendants Absolute — In Partition

At a Special Term, (*Part II*,) of the Supreme Court of
the State of New York, held in and for the County
of (*New York*) at the County Court House in said
County on the (*2nd*) day of (*October*, 1909.)

PRESENT:

Hon. (*M. Warley Platzek*,)
Justice.

(*JOSEPHINE W. TAYLOR*,)
Plaintiff,

against

(*ALICE W. EMMETT and others*,)
Defendants.

Upon the order entered herein on the (*second*) day of (*September*, 1909,) and upon all the papers upon which the same was granted, designating and appointing (*Richard M. Martin*) guardian *ad litem* for the infant defendants [name them], unless the said infant defendants, or some one in their behalf should procure a guardian *ad litem* to be appointed, as prescribed in Sections 471 and 472 of the Code of Civil Procedure within (*ten*) days after the service of a copy of said order, as therein directed, and upon reading and filing the affidavits of (*John F. Carlton*,) duly verified the (*twenty-ninth*) day of (*September*, 1909,) of (*Walter Langlotz*) duly verified the (*eighth*) day of (*September*, 1909,) showing due service of said order upon the persons, and as therein directed, and that neither of said infant defendants, nor any one or more of them, nor any person in their or either of their behalf, has procured or applied for the appointment of a guardian *ad litem* for said infant defendants, or either or any of them, within the time limited in said order, and within double the time limited in said order, as specified by law for service of papers by mail, and which said time and double time has now expired, and upon the consent heretofore filed of the said (*Richard M. Martin*,) duly acknowledged and proof by his affidavit, also heretofore filed, that he is a competent and responsible person;

Order Making Appointment Absolute

And upon motion of (*Strong & Cadwalader*,) attorneys for the plaintiff,

IT IS ORDERED that the said order so entered on the (*second*) day of (*September*, 1909,) designating and appointing the said (*Richard M. Martin*,) guardian *ad litem* of the said infant defendants [name them] be and the same hereby is made absolute, and that the said (*Richard M. Martin*,) be, and he hereby is, appointed guardian *ad litem* for the said infant defendants for the purposes of this action, and authorized to appear and defend this action for the said infant defendants as such guardian *ad litem* upon his filing a bond in due form of law in the penal sum of [Five Thousand] Dollars executed by him, with one sufficient surety, to be approved by the Court, or a justice thereof.

Enter,

(*M. W. P.*,)

J. S. C.

NOTICE OF APPEARANCE

FORM No. 46

*General Notice of Appearance and Demand

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i>),	} Plaintiff,
against	
(<i>JOHN DOE</i>),	
Defendant.	

Sir:

PLEASE TAKE NOTICE, that the defendant (*John Doe*), above named hereby appears in the above entitled action, and that I am retained as attorney for the said defendant in this action, and hereby demand that a copy of the complaint and of all other papers in this action be served on me at my office (*No. 15 William street*), (*Borough of Manhattan, City of New York*).

Dated (*May 12, 1914*).

Yours, etc.,
(*EZRA WILLIAMS*),
Attorney for Defendant,
Office and Post Office Address,
(*No. 15 William Street*),
(*Borough of Manhattan*),
(*City of New York*).

(*WILLIAM REILLY*), Esq.,
Attorney for Plaintiff,
(*No. 27 Pine Street*),
(*New York City*).

* For notice of appearance and waiver in foreclosure, see p. 737.

FORM No. 47

Notice of Appearance (Special)

SUPREME COURT,
(*New York*) County.

(*JOHN DOE*),

Plaintiff,

against

(*RICHARD ROE*),

Defendant.

Sir:

PLEASE TAKE NOTICE that I appear on behalf of (*Richard Roe*), as his counsel for the purpose and only for the purpose of (*moving to set aside the service of the summons and complaint herein upon the said Richard Roe*), and that the said (*Richard Roe*) does not appear generally in this action.

Dated (*August 31, 1914*).

(*THEODORE CEASAR*),

Defendant's Attorney,

Office and P. O. Address,

(*No. 15 William Street,*

Borough of Manhattan,

City of New York).

To

(*WILLIAM REILLY*), Esq.,

Attorney for Plaintiff,

Office and P. O. Address,

(*No. 13 Wall Street,*

Borough of Manhattan,

City of New York).

COMPLAINTS

The allegation of a certain condition or state of facts by the use of the participle "being" is not equivalent to an allegation that such condition or state of facts does exist and is an insufficient allegation when challenged by demurrer. (63 Misc. 235.)

FORM No. 48

For Goods Sold and Delivered (Agreed Price)

(CITY COURT OF THE CITY OF NEW YORK).

(JOHN JONES,)	}
Plaintiff,	
against	
(JOHN DOE.)	
Defendant.	

The plaintiff above named, by (*William Reilly*,) his attorney, complaining of the above-named defendant, alleges:

FIRST: At the (*City of New York*), on or about the (*first*) day of (*May*, 1916), said plaintiff, at the special instance and request of said defendant, sold and delivered to said defendant goods, wares, and merchandise, for which the said defendant agreed to pay the sum of (*One Thousand Dollars (\$1,000)*).

SECOND: Said sum has not been paid, nor any part thereof, although payment thereof has been duly demanded.

WHEREFORE plaintiff demands judgment against said defendant for the sum of (*One Thousand Dollars (\$1,000)*), with interest from the (*second*) day of (*January*, 1916),* together with the costs and disbursements of this action.

(*WILLIAM REILLY*,)

Plaintiff's Attorney,

Office and P. O. Address,

(*27 Pine Street*,)

(*Manhattan Borough*,)

(*New York City*.)

(Verification.)

* Interest runs from demand.

Goods Sold and Delivered — Reasonable Value

FORM No. 49**For Goods Sold and Delivered (No Agreed Price)***(CITY COURT OF THE CITY OF NEW YORK).*

<i>(JOHN JONES,)</i> Plaintiff, against <i>(JOHN DOE,)</i> Defendant.	}
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The plaintiff above named, by (*William Reilly*,) his attorney, complaining of the above-named defendant, alleges:

FIRST: At the (*City of New York*), on or about the (*first*) day of (*May*, 1916), said plaintiff, at the special instance and request of said defendant, sold and delivered to said defendant goods, wares and merchandise of the reasonable value of (*One Thousand*) Dollars (\$1,000).

SECOND: The said sum has not been paid, nor any part thereof, although payment has been duly demanded.

WHEREFORE plaintiff demands judgment against said defendant for the sum of (*One Thousand*) Dollars (\$1,000), with interest from the (*second*) day of (*January*, 1916),* together with the costs and disbursements of this action.

(*WILLIAM REILLY*,)

Plaintiff's Attorney,

Office and P. O. Address,

(*27 Pine Street*,)

(*Manhattan Borough*,)

(*New York City*.)

(Verification.)

* Interest runs from demand.

 Goods Sold and Delivered

The following form combining in one count a cause of action for an agreed price and for the reasonable value is frequently used and, although subject to a motion to separately state and number the two causes of action, this motion is so seldom made that this form has recommended itself to the profession. Demand should be averred to carry interest:

FORM No. 50**For Goods Sold and Delivered****(CITY COURT OF THE CITY OF NEW YORK).**

(JOHN JONES,)	}	Plaintiff,
against		
(JOHN DOE,)		Defendant.

The plaintiff above named, by (*William Reilly*,) his attorney, complaining of the above-named defendant, alleges:

FIRST: At the (*City of New York*), on or about the (*first*) day of (*May*, 1916), said plaintiff, at the special instance and request of said defendant, sold and delivered to said defendant goods, wares and merchandise of the reasonable value of (*One Thousand*) Dollars (\$1,000), which sum said defendant agreed to pay therefor.

SECOND: That said sum has not been paid, nor any part thereof, although payment thereof has been duly demanded.

WHEREFORE plaintiff demands judgment against said defendant for the sum of (*One Thousand*) Dollars (\$1,000), with interest from the (*first*) day of (*January*, 1916,) together with the costs and disbursements of this action.

(WILLIAM REILLY,)

Plaintiff's Attorney,

Office and P. O. Address,

(27 Pine Street,)

(Manhattan Borough,)

(New York City.)

(Verification.)

FORM No. 51

Goods Sold and Delivered by a Foreign Corporation

SUPREME COURT,
(*New York*) County.

(<i>THE AMERICAN GUN COMPANY,</i>)	} Plaintiff,
against	
(<i>WILLIAM MACK and JAMES THOMPSON,</i>)	
Defendants.	

The plaintiff above named, by (*John Jones*), its attorney, complaining of the above-named defendants, alleges:

First: Upon information and belief, that at all times hereinafter mentioned the plaintiff was and still is a foreign corporation, duly organized by and under the laws of the State of (*New Jersey*) and doing business in the State of New York, having its principal place of business at (*No. 26 Broadway in the Borough of Manhattan, City of New York;*) that prior to the making of the contract hereinafter alleged and prior to the (*10th*) day of (*January, 1916,*) the plaintiff duly complied with all the provisions of § 15 of the General Corporation Law and obtained a Certificate in the State of New York of authority to do business within said State, and had, prior to said (*10th*) day of (*January, 1916,*) duly complied with all the provisions of § 181 of the Tax Law and duly paid the license tax imposed by said section on foreign corporations doing business in the State of New York, and duly obtained a receipt therefor and had and has in all respects complied with all the laws of the State of New York permitting a foreign corporation to make contracts in this State and to maintain actions in the courts of this State.

Second: Upon information and belief, that said defendants were at all times hereinafter mentioned, engaged in business as co-partners under the firm name and style of (*Mack & Thompson*).

Third: Upon information and belief, that at the (*City of New York*), between the (*first*) day of (*May, 1916,*) and the (*first*) day of (*July, 1916,*) the plaintiff at the special instance and request of said defendants, sold and delivered to the said

Services Rendered — Reasonable Value

defendants goods, wares and merchandise of the reasonable value of (*one thousand*) dollars (\$1,000), which sum defendants agreed to pay therefor.

Fourth: Upon information and belief, that the said sum has not been paid nor any part thereof except the sum of (*two hundred*) dollars (\$200), although payment of the (*balance*) was duly demanded, on or about the (*first*) day of (*September, 1916*).

WHEREFORE plaintiff demands judgment against the defendants for the sum of (*eight hundred*) dollars (\$800), with interest thereon from the (*first*) day of (*September, 1916*), with the costs and disbursements of this action.

(*JOHN JONES,*)

Plaintiff's Attorney,
Office & P. O. Address,
(*31 Liberty Street,*
New York City.)

(Verification.)

FORM No. 52
For Services Rendered

SUPREME COURT,
(*New York*) County.

(*JOHN JONES,*)

Plaintiff,

against

(*JOHN DOE,*)

Defendant.

Plaintiff, by (*William French,*) his attorney, complaining of the above-named defendant, alleges:

I. Plaintiff is a physician and surgeon, duly licensed to practice as such in the State of New York, and between the (*1st*) day of (*February, 1916,*) and the (*15th*) day of (*March, 1916,*) at the (*Borough of Manhattan, City of New York,*) plaintiff rendered services to the defendant at his request (*as a physician in and about the treatment of the defendant and of the members of his family for various maladies, under which said persons*

 Money Had and Received

respectively labored, more fully set forth, as well as the times and duties of the plaintiff's visit, in Schedule "A," hereto annexed and made a part hereof; for divers medicines provided and administered in that behalf by plaintiff for defendant at his request).

II. The said services were reasonably worth the sum of (*one thousand*) dollars (\$1,000).

III. The same has not been paid nor any part thereof;

WHEREFORE plaintiff demands judgment against the defendant in the sum of (*one thousand*) dollars (\$1,000), with interest thereon from the (1st) day of (*April*, 1916,) together with the costs and disbursements of this action.

(*WILLIAM FRENCH,*)

Plaintiff's Attorney,

Office and P. O. Address,

(*No. 11 Wall Street,*)

(*Borough of Manhattan,*)

(*City of New York.*)

(Verification.)

 FORM No. 53

Complaint for Money Had and Received *

SUPREME COURT,
(*New York*) County.

(*ANN SHARP,*)

Plaintiff,

against

(*GEORGE ROSE,*)

Defendant.

The plaintiff complaining of the defendant above named by (*James Kent,*) her attorney, alleges:

First: On or about (*May 8*, 1916,) the defendant above

* See *Sharp v. Rose*, 20 N. Y. Supp. 826; aff'd Ct. Appeals, 139 N. Y. 652. Under this form of action it is competent to prove that a person has money in his hands which belongs to another, no matter how he came into possession of it; and upon which he has no legal or equitable claim as against the true owner and which he has no right to hold as against the true owner; and see 132 App. Div. 289.

Rent

named received and collected to and for the use and benefit of the said plaintiff from (*the Mutual Life Insurance Company of New York*) the sum of (*fourteen thousand*) dollars (\$14,000), which said sum the defendant retains, and though duly demanded refuses to pay.

WHEREFORE the plaintiff demands judgment against the defendant for the sum of (*fourteen thousand*) dollars (\$14,000) with interest from (*May 8, 1916,*) together with the costs of this action.

(*JAMES KENT,*)

Plaintiff's Attorney,
Office and P. O. Address,
(*140 Nassau Street,*)
(*New York City.*)

(Verification.)

FORM No. 54

For Installment of Rent on a Lease

(*CITY COURT OF THE CITY OF NEW YORK.*)

(*VICKAR REALTY COMPANY,*)

Plaintiff,

against

(*MARKET NATIONAL BANK,*)

Defendant.

The plaintiff above named by (*Lindsay & Lindsay,*) its attorneys, complaining of the defendant, alleges:

I. The plaintiff is (*a domestic corporation created by, existing and doing business under the laws of the State of New York, having its principal place of business in the Borough of Manhattan, City of New York,*) and was at all the times hereinafter mentioned the owner in fee of the premises known as (*No. 3 Park Place, in the Borough of Manhattan, City of New York.*)

II. (*Upon information and belief, that the defendant is a corporation created by and existing under the laws of the United States of America.*)

III. On or about the (1st) day of (*May, 1912,*) plaintiff and defendant entered into a lease in writing whereby plaintiff leased

Rent

and demised to the (*Market National Bank a portion of the ground floor*) of the premises, (*No. 3 Park Place,*) in (*the Borough of Manhattan, City of New York,*) for use as a (*banking office,*) therein more particularly bounded and described; that said letting was for a term of (*five (5) years*) to commence on the (*first*) day of (*May, 1912,*) and was upon the (*yearly*) rent of (*nine thousand (\$9,000)*) dollars, payable in equal (*monthly*) instalments on the first day of (*each month in advance.*)

IV. (Prior to the execution of said lease by defendant it had been duly licensed and authorized by the Comptroller of the Currency to transact business as a National Bank.)

V. Upon information and belief, that on or about the (*1st*) day of (*May, 1912,*) the defendant entered into possession and enjoyment of the premises demised in said lease.

VI. The (*monthly*) instalment of rent under said lease for (*the month of January, 1915,*) is due and unpaid; although payment of the same has been duly demanded from the defendant, no part thereof has been paid to the plaintiff.

WHEREFORE plaintiff demands judgment against the defendant for the sum of (*seven hundred and fifty*) dollars (\$750) with interest from the (*1st*) day of (*January, 1915,*) together with the costs and disbursements of this action.

(*LINDSAY & LINDSAY,*)

Attorneys for Plaintiff,

Office & P. O. Address,

(*27 Pine Street,*

New York City.)

(Verification.)

Personal Injuries

FORM No. 55

Complaint — For Personal Injuries

SUPREME COURT,
(*New York*) County.

(*MARGARET KESSLER,*)

Plaintiff,

against

(*NORTH RIVER REALTY COM-
PANY,*)

Defendant.

The plaintiff above named, by (*Joline, Larkin & Rathbone,*) her attorneys, complains of the above-named defendant, and alleges:

FIRST: Upon information and belief, the defendant at all the times hereafter mentioned was and now is a domestic corporation organized and existing under the laws of the State of New York, with its principal place of business in the (*Borough of Manhattan, City of New York,*) and was at the said times and now is the owner and had control of a building and premises known and designated as (*No. 344 West 48th Street, in the Borough of Manhattan, City, County and State of New York.*)

SECOND. That at the times herein mentioned the said building was and now is a tenement or apartment house, portions of which, constituting separate apartments, were then and now are rented out by the defendant to various persons as places of abode; the defendant at all times reserved to itself the control of all hallways, lobbies and staircases in said building, including the staircase hereinafter mentioned, and said hallways, lobbies and staircases were and now are used in common as the sole means of access to and egress from the various apartments in the said building from and to the adjoining street; that the plaintiff at all the times herein mentioned resided (*with her husband,*) a tenant of the defendant, in the said building on the (*fifth*) floor thereof.

THIRD: That the defendant negligently, recklessly and carelessly permitted and allowed the cloth or carpet furnished, put

Personal Injuries

down and maintained by it as a cover to said hallways, lobbies and staircases, and particularly the cloth or carpet furnished and put down and maintained by the defendant on the staircase situated between the (*fourth*) and (*fifth*) floors of the said building, to become worn, torn and ragged and otherwise out of repair, and with knowledge and notice of the condition thereof to remain worn, torn, ragged and otherwise out of repair.

FOURTH: That on or about the (*5th*) day of (*June*, 1914,) the plaintiff, then being lawfully in the said building and while proceeding along said staircase between the (*fourth*) and (*fifth*) floors of the said building, without any fault and negligence on her part, and solely by reason of the aforesaid negligence, recklessness and carelessness of the defendant, (*tripped upon the said defective cloth or carpet on the said staircase, and was precipitated down the said staircase to the landing thereof on the (fourth) floor of the said building.*

FIFTH: That solely by reason of the defendant's said negligence, recklessness and carelessness as aforesaid, the plaintiff was injured, externally and internally and permanently, about the head, body and limbs, and suffered severe injury (*to her spinal column*) and shock to her nervous system, so that she became and now is sick, sore and lame, and ever since has been and now is, and for a long time to come will be unable to labor, all to her damage in the sum of (*fifteen*) thousand dollars (\$15,000).

WHEREFORE, plaintiff asks judgment against the defendant for the sum of (*fifteen*) thousand dollars (\$15,000), together with the costs and disbursements of this action.

(*JOLINE, LARKIN & RATHBONE,*)

Attorneys for Plaintiff,
Office & P. O. Address,
(54 Wall) Street,
(*Borough of Manhattan,*
New York City.)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*Margaret Kessler,*) being duly sworn, deposes and says, that she is the plaintiff in the above-entitled action; that she has read the foregoing complaint and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters

Death by Negligence

therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.

(MARGARET KESSLER,)

Sworn to before me, this }
(30th) day of (July, 1914.) }

(WILLIAM D. TUCKER,)

Notary Public,
(New York) County, No. (3839.)

FORM No. 56

By Administrator for Damages for Negligently Causing Intestate's
Death

NEW YORK SUPREME COURT,
(New York) County.

(SUSANNA BURT), as administratrix
of the goods, chattels, and credits of
(PERRY J. BURT,) deceased,
Plaintiff,
against

(THE METROPOLITAN RAILWAY
COMPANY,)
Defendant.

The plaintiff, by (*Bosworth & Colson*), (*her*) attorneys, complaining of the defendant, alleges:

FIRST: Upon information and belief, that at all times herein mentioned the defendant was and now is a (*domestic*) corporation, duly created, organized and doing business under the laws of the State of (*New York*), and at all times herein mentioned operated a surface street railroad on and along Broadway, a public street in the City and County of New York, and moved and propelled cars thereon as a common carrier of passengers for hire.

SECOND: That on or about the (11th) day of (*October*, 1915), (*Perry J. Burt*), then a resident of the (*City and*) County of (*New York*), died intestate, and thereafter and on or about the (30th) day of (*October*, 1915), letters of administration upon the

Death by Negligence

estate of the said deceased were duly issued to the plaintiff by the Surrogate of the County of (*New York*) and that she has duly qualified and is now acting as administratrix thereunder.

THIRD: That the said (*Perry J. Burt*) left him surviving, the plaintiff, (*his widow, and two children of the age of five and two years respectively.*)

FOURTH: Upon information and belief, that on or about the (6th) day of (*October, 1915*), the said (*Perry J. Burt*) boarded one of the defendant's cars on its said line of railway on Broadway, paid his fare and became a passenger of the defendant. That as the said car was approaching 23d street, said *Perry J. Burt* gave a signal to the conductor thereof that he wished to alight at 23d street, and the motorman of said car, in response to a signal from the conductor, brought said car to a stop; that thereupon the said *Perry J. Burt* attempted to alight from said car by the front platform, and as he was so doing, and before he had an opportunity to step safely from said platform, the conductor of said car gave the usual two-bell signal to the motorman to start said car, and the motorman thereupon started said car suddenly without any notice to the said *Perry J. Burt*, and he was thereby violently thrown to the street and dragged by said car), and was so bruised, crushed and injured that he died at the time aforesaid.

FIFTH: That the death of the said (*Perry J. Burt*) was caused solely through the carelessness and negligence of the defendant, its servants and employees, and without any fault or negligence on his part in any way contributing thereto.

SIXTH: That by reason of the premises, plaintiff, as administratrix, as aforesaid, has sustained damages in the sum of (*twenty-five thousand*) dollars (\$25,000).

WHEREFORE, the plaintiff demands judgment against the defendant for the sum of (*twenty-five thousand*) dollars (\$25,000), together with the costs of this action.

(*BOSWORTH & COLSON,*)

Plaintiff's Attorneys,
Office and P. O. Address,
(30 Pine Street,)
(*Borough of Manhattan,*
New York City.)

(Verification.)

For Negligence — Against Employer

FORM No. 57

Complaint for Negligence Against Employer

NEW YORK SUPREME COURT,
County of (*New York*).

(<i>IRVING R. KELLOR,</i>)	}
Plaintiff,	
against	
(<i>NEW YORK LIGHTING COM- PANY,</i>)	
Defendant.	

The plaintiff above named, by (*Sharpe & Keene,*) his attorneys, complaining of the defendant above named, alleges:

FIRST: Upon information and belief, that the defendant is and at all the times hereinafter mentioned was, a domestic corporation.

SECOND: That on the (*8th*) day of (*November, 1915,*) and for some time prior thereto, this plaintiff was in the employ of the defendant.

THIRD: That on the said (*8th*) day of (*November, 1915,*) while in the employ of the defendant, this plaintiff was required in the course of such employment, to, and did, assist and participate in certain work then being performed by the defendant on (*42d Street, between 5th and 6th Avenues, in the Borough of Manhattan, City and County of New York, in and about the furnishing of electric light by the defendant in a building on the northerly side of said street.*)

FOURTH: That on said (*8th*) day of (*November, 1915,*) while so engaged in the work and employment as aforesaid, this plaintiff without any contributory fault or negligence on his part, and solely by reason of the negligence and fault of the defendant, sustained and suffered serious and permanent injuries and loss, of the nature more fully hereinafter set forth.

FIFTH: That during such employment and work as aforesaid, (*a piece of metal or steel, being a part of a steel drill or metal appliance then being used by the defendant in and about said work, was driven into the right eye of this plaintiff and*

For Negligence — Against Employer

permanently destroyed the sight thereof, and permanently impaired and weakened the plaintiff's other eye, and tore, wounded and permanently maimed, scarred and disfigured the right side of plaintiff's face.)

SIXTH: Upon information and belief that the injuries sustained by this plaintiff as aforesaid, resulted solely from the negligence of the defendant in not furnishing proper, sufficient and safe tools, machinery, and appliances in and about said work in which it employed this plaintiff, and in wrongfully and negligently furnishing and causing to be used in lieu thereof tools, machinery and appliances which were improper, insufficient, and unsafe, in employing incompetent, inefficient workmen in and about said work, and in causing and directing the said work to be performed in a negligent, improper and dangerous manner.

SEVENTH: Upon information and belief that the defendant was negligent in that the superintendent, who at the time said injuries were received by the plaintiff was entrusted by the defendant with the superintendence of the work at which the plaintiff was then engaged, and who was then exercising such superintendence and whose sole or principal duty was that of superintendence, and who was then acting as such superintendent, with the authority or consent of the defendant, his employer, negligently caused the said work to be done in an improper, hasty, careless and reckless manner, and thereby unreasonably exposed this plaintiff to danger and caused him to suffer the injuries and loss herein more fully set forth.

EIGHTH: That by reason of the premises aforesaid the plaintiff has been caused and will permanently be caused much pain and suffering, and has been permanently injured (*scarred and disfigured in his right eye, and has permanently and wholly lost the sight thereof, and the left eye of the plaintiff and the sight thereof has been weakened and impaired,*) and as plaintiff is informed and believes, will be permanently weakened, and continue to become weakened and impaired and will be permanently maimed, scarred and disfigured.

NINTH: That by reason of the premises and the injuries received by the plaintiff through the negligence of the defendant as aforesaid, this plaintiff was (*confined in a hospital for a period of two weeks,*) has since required and as he is informed and believes, will continue to require considerable medical attendance and treatment, and has been and will be prevented from pursuing

For Negligence — Against Railroad

his business or rendering services or labor as heretofore, and was otherwise greatly injured, all to his damage in the sum of (*Twenty Thousand*) Dollars (\$20,000.)

TENTH: That within 120 days after the said injuries were sustained by this plaintiff, and on or about the (3rd) day of (*March*, 1915,) notice was duly given to and served upon the defendant, of the time, place and cause of such injuries, pursuant to and in accordance with the statute in such cases made and provided.

WHEREFORE, plaintiff demands judgment against the defendant herein for the sum of (*Twenty Thousand*) Dollars (\$20,000,) together with the costs and disbursements of this action.

(*SHARPE & KEENE*,)

Attorneys for Plaintiff,

Office & P. O. Address,

(*27 William Street,*
Borough of Manhattan,

New York City.)

(Verification.)

FORM No. 58

For Negligence Against Railroad

SUPREME COURT,
(*New York*) County.

(*LORETTE VERRAULT*,)

Plaintiff,

against

(*THE NEW YORK RAILWAYS*
COMPANY.)

Defendant.

The plaintiff complains of the defendant and states her cause of action as follows:

First: The defendant is a domestic street railway corporation duly organized under the laws of the State of (*New York*) and

For Negligence — Against Railroad

under its Charter at the time hereinafter mentioned, operated and maintained street railways upon various streets and avenues in the (*City of New York*).

Second: On or about the (6th) day of (*August, 1915*), this plaintiff was a passenger on the line of railway owned and operated by the defendant on (*Eighth Avenue*) in the (*City of New York, Borough of Manhattan*), and duly paid her fare as such passenger to the defendant, and was traveling as such passenger on said railway.

Third: That the plaintiff while such passenger, as aforesaid, (*intended to leave said car at 87th Street. After the said car had stopped at said street, and while attempting to get off said car, and while one foot of the plaintiff was upon the ground, and her other foot upon the step of said car, the conductor of said car negligently signalled the motorman of said car to go ahead, which he did*), and this plaintiff, without any fault upon her part, and while using proper care and caution (*to alight from said car, was thrown violently therefrom to the ground, and in falling*) sustained serious and painful injury (*to her left hip*).

Fourth: That by reason of such injury, caused wholly by the negligence of the defendant as aforesaid, this plaintiff was (*confined many weeks in Saint Luke's Hospital, New York City*), and suffered great bodily pain and mental anguish, and had to undergo prolonged and painful treatment (*in said hospital*) for said injury. That said injury was (*a fracture of the neck of the femur bone of the left leg*) of this plaintiff, and the same is permanent in its nature, and ever since said injury the plaintiff has been (*unable to walk, except with the aid of crutches, and she*) will never, as (*she*) is informed and believes, (*be able to again walk without the aid of crutches*), to her great injury and damage.

Fifth: That by reason of such injury, caused wholly and entirely by the negligence of the defendant, as aforesaid, this plaintiff was obliged to and did incur large expense and to pay out and expend large sums of money for her treatment (*in said hospital*) and for medical treatment (*after she left said hospital*), and she will be obliged, as long as she may live, to incur expenses and to pay out and expend large sums of money for medical attendance and treatment for the said injury.

Sixth: That by reason of her said injury, and the pain and suffering this plaintiff has been obliged to undergo, and as such injury is permanent, the pain and suffering that she will be

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obliged to undergo during her lifetime, and as she must hereafter incur necessarily large sums of money for medical attendance and treatment, she has been and will be injured and damaged in the sum of (*fifty thousand*) dollars.

WHEREFORE, this plaintiff demands judgment against the defendant for the sum of (*fifty thousand*) dollars besides the costs of this action

(*HOWARD HARGREAVES*),

Plaintiff's Attorney,
Office and P. O. Address,
(*221 Broadway*),
(*New York City*).

(Verification.)

FORM No. 59

Complaint in Action Against New York City — Damage to Property
— Negligence

SUPREME COURT,
(*Kings*) County.

(*EDWARD LAWSON*),

Plaintiff,

against

(*THE CITY OF NEW YORK*),

Defendant.

The plaintiff, by (*Howe & Baker*), his attorneys, complains of the defendant and alleges:

I. Upon information and belief, that at the times herein mentioned the defendant was and now is a municipal corporation, duly organized and existing under the laws of the State of New York.

II. That at the times herein mentioned and for some time prior thereto, the plaintiff was and now is the lessee and in possession of the premises at (*Knickerbocker and Myrtle Avenues, Borough of Brooklyn, New York City, known as 567 Knickerbocker Avenue.*)

III. That some time prior to the times herein mentioned, the

Against N. Y. City — Damage to Property

defendant built and constructed and at said times herein mentioned, the defendant maintained certain drains or sewers along the said streets and the adjoining streets and in front of and near the said premises and caused to flow therein all the sewage from that locality.

IV. Upon information and belief, that said drains or sewers were wrongfully, improperly, carelessly and negligently constructed and built as aforesaid by the defendant without any proper means and provisions for carrying off and discharging the sewage by them collected as aforesaid, and that said drains or sewers were built of insufficient capacity, strength and durability and that in locating same no proper regard was had to the real high-water line by means of all which said sewers were unable to carry off the said sewage, as they were provided to do, and in consequence thereof, at certain times of high pressure numerous overflows of said sewers occurred, and that the said sewers at the times hereinafter mentioned and for a long time prior thereto were wrongfully, carelessly and negligently maintained by the defendant in said improper condition, and were negligently and carelessly permitted to become and be for a long time stuffed and choked up and obstructed with filth and other matters, and were not cleaned or inspected, although the defendant well knew that the same were liable to become stuffed and choked up and obstructed under ordinary circumstances, and were in a worn, rotten and defective condition, and were negligently and carelessly not kept in proper repair; and that the defendant at the times hereinafter mentioned and for a long time prior thereto had due notice of all the matters hereinbefore set forth.

V. That solely by reason of the carelessness and negligence of the defendant in the construction, maintenance and management of said sewers as hereinbefore set forth, and without any fault or neglect on the part of the plaintiff, on the (28th) day of (June, 1914,) the said sewers overflowed and a large quantity of water, filth and other matters were cast therefrom with great force into said premises of the plaintiff and destroyed a large quantity of personal property that plaintiff had therein and otherwise caused him great loss and damage in all in the sum of (*six thousand one hundred and seventy-six and 40/100* (\$6,176.40)) dollars.

VI. That thereafter, to wit, on the (28th) day of (*December*, 1914,) and within six months after the accruing of said cause of

 Personal Injuries — Against Municipality

action and before the commencement of this action, the said plaintiff duly filed in the offices of the Comptroller and of the Corporation Counsel of the defendant, a due notice in writing of said claim, and of his intention to commence such an action as the present, and of the time and place at which said damages were sustained by the plaintiff, and that although more than thirty (30) days had passed after the filing of said notice and before the commencement of this action said Comptroller has refused, failed and neglected to make any adjustment or settlement of said claim.

Wherefore, plaintiff demands judgment against the defendant for the sum of (*Six thousand one hundred seventy-six and 40/100* (\$6,176.40)) dollars, with interest thereon from the (*28th*) day of (*June, 1909,*) together with the costs and disbursements of this action.

(*HOWE & BAKER*),
 Attorneys for Plaintiff,
 Office and P. O. Address,
 (161 Broadway,)
 (*Manhattan Borough,*)
 (*New York City.*)

(Verification.)

 FORM No. 60

Complaint for Personal Injuries Against Municipal Corporation

SUPREME COURT,
 (*New York*) County.

(SARA EGAN.) against (THE CITY OF NEW YORK.)	}	Plaintiff, Defendant.
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Plaintiff complaining, alleges:

First: That the defendant was at all the times hereinafter mentioned and now is a domestic municipal corporation.

Personal Injuries — Against City of N. Y.

Second: That the plaintiff has complied with all the conditions precedent to the bringing of this action and complied with all the provisions of the (*Charter of the City of New York*) in relation thereto, and in particular has presented the claim hereinafter mentioned to the (*Comptroller of the City of New York*) for adjustment and more than (*thirty*) days has elapsed since the presentation of said notice of claim and said claim remains unadjusted and said (*Comptroller*) has failed and refused to make any adjustment of the same, and the plaintiff has, prior to the bringing of this action and within (*six months after the injuries hereinafter described were received*) duly served notice upon the (*Corporation Counsel of the City of New York*) of her intention to sue upon the claim hereinafter set forth.

Third: That the (*155th Street Viaduct and Speedway and the intersection of said speedway and said viaduct*) in the (*City of New York*) is a public and much traveled thoroughfare and that it was and is the duty of the defendant to keep and maintain streets and avenues of said (*City of New York*), including the said (*Speedway, 155th Street Viaduct and the intersection of said Speedway and 155th Street Viaduct*) in good order and repair and not to (*suffer ice and snow to be or remain or accumulate thereon*) in such condition as to be unsafe and dangerous to foot passengers.

Fourth: That the defendant improperly, carelessly and unlawfully (*suffered ice and snow to remain and accumulate for a period of one week and more upon the crosswalk at the intersection of 155th Street Viaduct and Speedway in the City of New York*) in such an unsafe, (*slippery*) and otherwise dangerous condition that a person could not at or about the time herein mentioned walk over it without danger of falling down, of all of which the defendant had due and timely notice.

Fifth: That by reason of the aforesaid negligence of the defendant the plaintiff on the (*6th*) day of (*March, 1914*), while lawfully passing over and upon said (*crosswalk on the northerly side of 155th Street Viaduct, where said viaduct intersects the Speedway*) and without any fault on (*her*) part, was (*suddenly precipitately, cast and thrown upon the ground*) and thereby plaintiff sustained serious bodily injuries and was rendered sick, sore and bruised and sustained among other injuries, (*a fracture of the shoulder and a fracture of the elbow*), and has

Personal Injuries — Against City of N. Y.

as a result thereof for some time been confined to (*her*) bed and house and has required medicines and medical attention and has been prevented and will be prevented from pursuing (*her*) usual and ordinary avocation and has expended large sums and will be required to expend further sums for medical and other attention, all to her damage in the sum of (*seventy-five hundred* (\$7,500)) dollars.

Sixth: That said accident and resultant injuries were not caused by any negligence on the part of plaintiff, but were caused by reason of the fact that the defendant carelessly, negligently and with full notice thereof, (*suffered and permitted ice and snow to accumulate on said walk, street and crossing at the point where the plaintiff fell so as to become dangerous for persons passing along the same*), and by reason of the fact that the defendant carelessly and negligently (*allowed said walk, street and crossing*) to become and remain in a condition dangerous to (*those passing along and on the same and by reason of the fact that said accumulation of said ice and snow*) and said dangerous conditions were allowed by the defendant to exist and remain for a period of upwards of (*one week*) next preceding the date of the accident above set forth.

WHEREFORE, plaintiff demands judgment against the defendant for the sum of (*seven thousand five hundred* (\$7,500)) dollars, together with the costs and disbursements of this action.

(*HARDEN & WHITE*),

Attorneys for (*Plaintiff*),

Office and P. O. Address,

(*161 Broadway*),

(*Borough of Manhattan*),

(*City of New York*.)

(*Verification*).

Personal Injuries to Pedestrian

FORM No. 61

Complaint — Personal Injuries to Pedestrian

SUPREME COURT,
(New York) County.

(LOUISE M. SNYDER,)

Plaintiff,

against

(McMULLEN & COMPANY, INC.)

Defendant.

Plaintiff complains and alleges:

I. Upon information and belief, that the defendant is a corporation, organized and existing under and by virtue of the Laws of the State of New York, and at all of the times hereinafter mentioned, *(was engaged as such corporation, in contracting business, in the City, County and State of New York.)*

II. Upon information and belief, that at all of the times hereinafter mentioned, and for some time prior thereto, the defendant, *(was engaged as contractor in the construction of, and the operations necessary to build and construct and maintain a certain underground railway, called a subway, underneath the surface of the street, known as Lexington Avenue, a public highway, between 123d and 124th Street, and elsewhere, in the Borough of Manhattan, City, County and State of New York.)*

III. Upon information and belief, that at all the times hereinafter mentioned, and for some time prior thereto, the defendant, *(its officers, agents, servants and employees, were actually in possession of, and in the control and management of, the construction work, and was actually doing and performing the said construction work, and had constructed and was maintaining a temporary structure, above its said work, and used in connection therewith, and as a part thereof, and incident thereto, which said structure) was also used by the public, and constructed, maintained and operated by the defendant, for the purpose of public travel, and for the passage of vehicles and pedestrians, along, upon and over the same.*

IV. Upon information and belief, that at all of the times

Personal Injuries to Pedestrian

hereinafter mentioned, it was the duty of the defendant, (*its officers, agents, servants and employees, to construct, maintain, use and operate, for the purposes aforesaid, a safe structure, made of proper and safe materials, arranged and placed in a proper and safe manner, and free from defects, pitfalls, traps*) and menaces to the life and limb of persons lawfully and rightfully passing along, over and about the same and using the same as pedestrians or otherwise, and to properly and adequately inspect, maintain and keep the said (*structure,*) and all of the parts thereof, in a proper and safe condition of repair, and to maintain the same in a safe and proper condition, and so as not to endanger the life, limb or property of persons lawfully and rightfully using the same.

V. Upon information and belief, that on or about the (*8th*) day of (*May, 1914,*) and for some time prior thereto, the defendant, (*its agents, servants and employees,*) failed in its duty to the plaintiff, and other persons rightfully using the said (*structure,*) and neglected and failed to so (*build, construct and*) maintain the said (*structure,*) and the parts thereof, used by the defendant and by the public, as a sidewalk, for public passage, (*north and south,*) on the (*west*) side of (*Lexington Avenue,*) in the (*Borough of Manhattan, City, County and State of New York,*) and so maintained the said (*structure*) in an irregular, unsafe, improper, (*sloping*) and dangerous condition, and un-

VI. That on the (*8th*) day of (*May, 1914,*) while the plaintiff suitable for public travel by pedestrians, lawfully and rightfully passing over and upon the same.

was lawfully and rightfully passing along, upon and over the said (*west*) (*sidewalk of Lexington Avenue,*) at a place (*between 123d and 124th Streets,*) in the said (*City of New York,*) in the exercise of due care on (*her*) own part, and solely by reason of the omission of duty, and failure of the defendant to do and perform its duty to plaintiff, and to construct and maintain the said (*structure and sidewalk,*) thereof, in a safe, suitable, proper, adequate condition, and free from defects and dangerous (*pitfalls, traps and holes and openings and elevations*) and irregularities, and by reason of the violation of laws and ordinances of (*the City and State of New York,*) and the (*slippery, sloping structure furnished, built,*) provided and knowingly maintained by the defendant, in a (*slippery and sloping*) and unnecessarily dangerous condition, and with the (*boards and planks thereof,*

Personal Injuries to Pedestrian

separated with openings and with knot holes and irregular shaped holes and depressions in the said structure and planks thereof,) all of which made, *(during the rain, a slippery)* and unnecessarily dangerous condition of the *(wet structure and boards,)* a menace and dangerous condition *(and trap)* into which and by reason of which, plaintiff was caused and permitted to *(trip, catch the shoe of her foot, and to lose her balance and to be violently thrown to the surface of the said structure, and on to the hard boards thereof with great force and violence)* causing and producing the injuries hereinafter complained of.

VII. Upon information and belief, that the said *(structure, and the sidewalk thereof,)* so *(built, constructed and)* maintained by the defendant, and the way, manner and method in and by which the defendant used and permitted the use of the same constituted and was a nuisance, and a menace to the plaintiff, and all other persons, rightfully and lawfully using the same, as pedestrians, to the knowledge of defendant by reason of its construction, physical condition, and by reason of former accidents and mishaps at or near same place.

VIII. That the said accident occurred and the said injuries were sustained by the plaintiff, solely by reason of the wrongful omissions and unlawful acts, and gross negligence and carelessness of the defendant, *(its agents, servants and employees)* and without fault, or participation or enjoyment thereof, or want of care on the part of the plaintiff.

IX. That the said accident and injuries sustained by the plaintiff aforesaid by reason of the said accident, consisted of *(severe shock, bruises and contusions, fracture of the right hip)* and other injuries incidental thereto, both internal and external, which made plaintiff sick, sore, lame and disabled, and which injuries and the results and consequences thereof, are likely to be permanent, and plaintiff alleges, upon information, that the said injuries are permanent and that she will never recover from the consequences thereof; that she has been obliged to expend large sums for medicines and medical attention and treatment, and has been confined in *(two hospitals,)* and has been subjected to *(surgical operations)* to be cured of her said injuries, and has experienced great pain and suffering, and has been prostrated in her physical and nervous systems, and has been and for a long time will be confined to her bed and unable to *(help herself,*

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or others dependent upon her,) all to her damage in the sum of \$50,000 which she claims.

Wherefore, plaintiff demands judgment against the defendant for the sum of (\$50,000,) together with the costs and disbursements of this action.

(RAYMOND & FULLER,)

Attorneys for Plaintiff,

Office and P. O. Address,

(No. 1 Liberty Street,)

(New York City.)

(Verification.)

 FORM No. 62

Against Hotel for Loss of Baggage

SUPREME COURT OF THE STATE OF NEW YORK,
(Kings) County.

(CLARA FREEMAN,)

Plaintiff,

against

(MANHATTAN HOTEL COM-
PANY,)

Defendant.

The plaintiff, above named, by (Sheldon Montgomery, her) attorney, complaining of the defendant, alleges:

First: That at all the times hereinafter mentioned defendant was and still is (*a domestic corporation duly organized and existing under the laws of the State of New York*), and was at all times hereinafter mentioned in possession of, and the manager and keeper of, a common inn or hotel in (*the Borough of Manhattan, City of New York*) for the entertainment of travelers and transient persons as guests, known as (*Hotel Belmore*).

Second: That on or about the (20th) day of (September, 1916,) the plaintiff was received by the defendant into said (*Hotel Belmore*) as a traveler and transient guest, together with (her)

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baggage, to wit: (*a trunk*), and following named articles therein contained and of the value stated, to wit:

(*List of contents with value.*)

The property of the plaintiff of the value of (*two thousand and sixty*) dollars (\$2,060).

Third: That on or about the (23rd) day of (*September*, 1916), the plaintiff remaining and being at said (*Hotel Belmore*) as such guest, and the said above-enumerated property being then in the special care and custody and charge of the defendant as landlord and keeper of said common inn or hotel, with directions where to deliver same to the plaintiff, the said defendant and its servants and employees so negligently and carelessly conducted themselves with regard to said baggage and property of the plaintiff that the same, by and through the carelessness and negligence of the defendant and its servants and employees and (*by the permission and direction of the defendant, was removed from said hotel to some place unknown to the plaintiff.*) and defendant failed and refused to deliver same to the plaintiff upon (*her*) demand therefor, and the said baggage and property became thereby wholly lost to the plaintiff to her damage in the sum of (*two thousand and sixty*) dollars (\$2,060).

Wherefore, the plaintiff demands judgment against the defendant for (*two thousand and sixty*) dollars (\$2,060), together with the costs of this action.

(*SHELDON MONTGOMERY,*)

Plaintiff's Attorney,

Office and P. O. Address,

(*100 Broadway,*)

(*Manhattan, New York City.*)

(Verification.)

Upon Account Stated

FORM No. 63

Upon Account Stated

SUPREME COURT,
(*New York*) County.

(*WILLIAM THOMPSON,*)
Plaintiff,

against

(*FREDERICK SMITH,*)
Defendant.

The plaintiff above named by (*William Randall*), his attorney, complaining of the above-named defendant, alleges:

I. On the (*first*) day of (*May*, 1915), at the (*Borough of Manhattan, City of New York*), an account was stated between the plaintiff and the defendant; and upon such statement a balance of (*nine hundred dollars*) was found to be due from said defendant to this plaintiff.

II. The defendant then and there agreed and promised to pay said sum.

III. No part thereof had been paid.

WHEREFORE, plaintiff demands judgment against the defendant for the sum of (*nine hundred dollars*), with interest from the (*first*) day of (*January*, 1916), together with the costs and disbursements of this action.

(WILLIAM RANDALL,)

Attorney for Plaintiff,

Office & P. O. Address,

(14 Wall Street,)

(Borough of Manhattan,)

(New York City.)

(Verification.)

On Promissory Note — Payee Against Maker

FORM No. 64

On Promissory Note. Payee Against Maker

(CITY COURT OF THE CITY OF NEW YORK).

(JOHN JONES,)	}
Plaintiff,	
against	
(JOHN DOE,)	
Defendant.	

The plaintiff above named, by (WILLIAM REILLY), his attorney, complaining of the above-named defendant, alleges:

1. Heretofore, on or about the (*first*) day of (*June*, 1914), defendant made and delivered to plaintiff his promissory note in writing, dated on that day, wherein and whereby he promised to pay to the plaintiff or his order, at (*No. 27 Pine Street, Borough of Manhattan, City of New York*), the sum of (*one thousand dollars. (\$1,000) six months*) after said date.

2. No part of said note has been paid, and said plaintiff is now the holder and owner thereof.

WHEREFORE, plaintiff demands judgment against the defendant for the sum of (*one thousand dollars (\$1,000)*), together with interest from the (*first*) day of (*January*, 1915), and the costs of this action.

(WILLIAM REILLY),

Plaintiff's Attorney,
Office and P. O. Address
(27 Pine Street),
(Manhattan Borough),
(New York City).

(Verification.)

On Promissory Note — Payee Against Maker

FORM No. 65

On Promissory Note. Payee Against Maker, Setting Forth Copy of Note

(CITY COURT OF THE CITY OF NEW YORK.)

(JOHN JONES,)	}
Plaintiff,	
against	
(JOHN DOE,)	
Defendant.	

The plaintiff above named, by (WILLIAM REILLY), his attorney, complaining of the above-named defendant, alleges:

1. Heretofore or about the (*first*) day of (*June*, 1914), the defendant made and delivered to the plaintiff his promissory note in writing, of which the following is a copy:

(" \$1,000 New York, June 1, 1914.

" *Six months after date I promise to pay to the order of John Jones, the sum of one thousand dollars, at 27 Pine Street, Manhattan Borough, New York City.*

" *Value received.*

(JOHN DOE.)

2. No part of said note has been paid, and there is now due the plaintiff thereon from the defendant, the sum of (*one thousand dollars* (\$1,000)), with interest from the (*first*) day of (*January*, 1915), which the plaintiff claims.

WHEREFORE, plaintiff demands judgment against the defendant for the sum of (*one thousand dollars* (\$1,000)), with interest from the (*first*) day of (*January*, 1915), together with costs and disbursements of this action.

(WILLIAM REILLY),

Plaintiff's Attorney,
Office and P. O. Address,
(27 Pine Street),
(Manhattan Borough),
(New York City).

(Verification.)

On Promissory Note — Payee Against Maker and Indorser

FORM No. 66

On Promissory Note. Payee Against Maker and Indorser
(CITY COURT OF THE CITY OF NEW YORK.)

(JOHN JONES,)	}	Plaintiff, against (RICHARD ROE) and (JOHN DOE,)
		Defendants.

The plaintiff above named, by (*William Reilly*), his attorney, complaining of the above-named defendants, alleges:

I. Heretofore the defendant, (*John Doe*), made his promissory note in writing, dated the (1st) day of (*March, 1915*), at (*New York City*), and thereby promised to pay to the order of the defendant, (*Richard Roe*), the sum of (*one thousand (\$1,000)*) dollars (*sixty (60) days*) after said date.

II. The defendant (*Richard Roe*), thereafter and before maturity of said note, for value indorsed and delivered the same to this plaintiff, who is now the owner and holder thereof.

III. At maturity, said note was duly presented for payment and payment thereof then and there demanded, but the same was not paid, of all of which due notice was given to defendant (*Richard Roe*).

IV. No part of said note has been paid;

WHEREFORE, plaintiff demands judgment against defendants for the sum of (*one thousand (\$1,000)*) dollars, together with interest thereon from the (1st) day of (*May, 1915*), and the costs of this action.

(*WILLIAM REILLY*),

Plaintiff's Attorney,
 Office and P. O. Address,
 (*27 Pine Street*),
 (*Borough of Manhattan*),
 (*City of New York*).

(Verification.)

To Recover a Penalty

FORM No. 67

Complaint — In action to recover on Statutory Penalty
SUPREME COURT,
(*New York*) County.

(<i>JOHN MUNN,</i>)	}
Plaintiff,	
against	
(<i>PALACE CAFE AND RESTAURANT COMPANY,</i>)	
Defendant.	

The plaintiff by (*Carl Price,*) his attorney, respectfully shows to this court and alleges:

1. Upon the information and belief, that at all times hereinafter mentioned, the defendant was and now is a domestic corporation, duly created, organized and doing business under the laws of the State of New York.

2. That on the (22nd) day of (*June, 1916,*) said (*Palace Cafe and Restaurant Company*) kept and maintained for the use, accommodation, patronage, comfort and entertainment of the general public, a certain saloon at (*No. 56 East 32nd Street, Borough of Manhattan, City of New York,*) wherein and whereat among other things, it dispensed whiskey, beers and other spirituous liquors by the dram or drink to such persons as might apply to purchase the same, being duly licensed by the proper authorities.

3. On said (22nd) day of (*June, 1916,*) between the hours of (*one and three*) o'clock in the (*afternoon,*) the plaintiff, (*John Munn,*) a colored man, entered the premises of said saloon of said (*Palace Cafe and Restaurant Company*) at (*No. 56 East 32nd Street*), and requested the bartender of said (*Palace Cafe and Restaurant Company,*) who was then and there selling beer and other spirituous liquors by the drink to such as might desire to purchase the same, to sell him, (*John Munn,*) a glass of beer, for which he was ready, able and willing to pay, but the said bartender refused to furnish said (*John Munn*) with said drink of beer, and wilfully and wrongfully and knowingly refused such drink to said (*John Munn,*) on account of his race and color; while at the same time and place, and at the

 Replevin — Unlawful Detention

time of such refusal, as aforesaid, said bartender furnished others then and there present, like drinks of the same quality and quantity, as the drink requested by said (*John Munn.*)

4. That by reason thereof, the defendant became indebted to the plaintiff in the penalty and sum of five hundred dollars (\$500); and an action has accrued according to the provisions of Sections 1 and 2 of chapter 265 of the Laws of 1913, amending Sections 40 and 41 of Chapter 6 of the Consolidated Laws, entitled "An Act relating to Civil Rights," in effect April 11, 1913.

WHEREFORE, plaintiff demands judgment for the sum of five hundred dollars (\$500) together with the costs and disbursements of this action.

(*CARL PRICE*),
 Attorney for plaintiff,
 Office and Post Office Address,
 (*141 Broadway*),
 (*Borough of Manhattan*),
 (*City of New York*).
 (Verification.)

FORM No. 68
Complaint In Replevin — Unlawful Detention

SUPREME COURT,
 County of (*New York*).

(*HOFFMAN HOUSE, NEW YORK*),

Plaintiff,

against

(*COLONIAL STORAGE COMPANY*)

and (*MARY MARTIN*), impleaded,
 Defendants.

Plaintiff above named, complaining of the defendants, for a complaint, herein respectfully shows to this court and alleges:

I. That the plaintiff is, and at all times herein mentioned was (*a domestic corporation organized and existing under and by virtue of the laws of the State of New York, and upon informa-*

Replevin — Unlawful Detention

tion and belief that the defendant, the Colonial Storage Company, is and at all the times herein mentioned was a domestic corporation organized and existing under and by virtue of the laws of the State of New York).

II. That the plaintiff is and at all times herein mentioned and at the time this action was commenced was the lawful owner of a certain chattel, to wit, (*an oil painting entitled "Spring"*) of the value of about *one thousand* (\$1,000) dollars, and is, and at all the times herein mentioned and at the time of the commencement of this action was entitled to the immediate possession thereof.

III. On information and belief that (*the business of the defendant, the Colonial Storage Company, is and at all the times herein mentioned was that of a storage and warehouse keeper, and that the said chattel, the property of the plaintiff, was placed in the possession of said defendant, the Colonial Storage Company, and stored with it as a storage and warehouse keeper by one Mary Martin, or her agents or servants*), and at the time of the commencement of this action, was wrongfully kept and detained by the defendant (*the Colonial Storage Company*), from the plaintiff herein as an agent or bailee of (*said Mary Martin*) or her agents and servants and as her or their property. On information and belief that said (*Mary Martin*) claims to be the owner of said chattel.

IV. On information and belief that on or about the (13th) day of (*January, 1916*), and previous to the commencement of this action, said chattel was duly demanded from said (*Colonial Storage Company*), but said (*Colonial Storage Company*) refused to deliver it to the plaintiff herein.

Wherefore, plaintiff demands judgment against the defendants for the possession of said chattel and adjudging that the plaintiff is the owner and entitled to the possession thereof, and for such other and further relief as to the court may seem just and proper, together with the costs of this action.

(*ARNOLD GREEN*),
Attorney for Plaintiff,
Office and Post Office Address,
(*70 Broadway*),
(*Borough of Manhattan*),
(*New York City, N. Y.*)
(Verification.)

In Replevin — Unlawful Detention

FORM No. 69

Complaint in Replevin — Unlawful Detention

SUPREME COURT,
(*New York*) County.

(<i>JOHN BROWN</i> ,)	} Plaintiff,
against	
(<i>JAMES RICE</i> ,)	
Defendant.	

Plaintiff above named by (*Lindley Z. Murray*), his attorney, complaining of the defendant above named, alleges:

I

That at the time of the commencement of this action and on or before the (*5th*) day of (*May*, 1916), plaintiff was and still is the owner of and entitled to the immediate possession of the chattels mentioned in Schedule "A" hereto annexed and made a part of this complaint; that said chattels were on the (*5th*) day of (*May*, 1916), and still are of the value of (*two thousand*) dollars.

II

That the defendant has become possessed of and wrongfully detains from the plaintiff the articles mentioned in said Schedule "A."

III

That before the commencement of this action plaintiff duly demanded of the defendant that he return said chattels to plaintiff, but he has failed and refused to do so, to plaintiff's damage in the sum of (*five hundred*) dollars.

WHEREFORE plaintiff demands judgment against the defendant for the possession of said articles mentioned in Schedule "A" hereto annexed, or for the sum of (*two thousand*) dollars in case possession thereof cannot be given to plaintiff; and

In Replevin — Wrongful Taking

for the further sum of (*five hundred*) dollars damages, together with the costs of this action.

(*LINDLEY Z. MURRAY*),

Plaintiff's Attorney,

Office & P. O. Address,

(*217 Broadway*),

(*New York City.*)

(Verification.)

FORM No. 70

Complaint in Replevin — Wrongful Taking

SUPREME COURT,

(*New York*) County.

(*JOHN JONES,*)

Plaintiff,

against

(*JOHN DOE,*)

Defendant.

Plaintiff above named by (*Joseph Mulqueen, Jr.*) his attorney, complains of the defendant above named and alleges:

I

That at the time of the commencement of this action, and on or before the (*2d day of May, 1916*), plaintiff was the owner and entitled to the immediate possession of (*Certificate No. 33 of the Powhattan Mining Company for one hundred shares of the preferred stock of said Company*) of the (*par*) value of (*ten thousand*) dollars (\$10,000) and the actual value of about (*ten thousand*) dollars (\$10,000) and entitled to all the dividends thereon.

II

That on or about the (*2d*) day of (*May, 1916*), at the (*City of New York*) the defendant wrongfully took the said (*stock certificate*) from plaintiff's possession and wrongfully detains the same

In Replevin — Wrongful Taking

from him to plaintiff's damage in the sum of (*two hundred and fifty*) dollars (\$250).

WHEREFORE, plaintiff demands judgment against the defendant for the possession of the said (*stock certificate*) or the sum of (*ten thousand*) dollars (\$10,000) in case possession thereof cannot be given to plaintiff, and for the sum of (*two hundred and fifty*) dollars (\$250) damages, together with the costs of this action.

(JOSEPH MULQUEEN, JR.),
Plaintiff's Attorney,
Office and P. O. Address,
(60 Wall) Street,
(Borough of Manhattan),
(New York City).

(Verification.)

FORM No. 71

Complaint in Replevin* — Wrongful Taking

SUPREME COURT,
County of (*New York*).

(JOHN MARTIN,) }
Plaintiff,

vs.

(WILLIAM LEWIS,) }
Defendant.

The plaintiff above named complains of the defendant and alleges:

I. The plaintiff, at all times hereinafter mentioned, was and still is the lawful owner and entitled to the immediate possession

* "Where the complaint, in an action brought to recover possession of chattels, alleges that the defendant 'has concealed, removed or disposed of said chattels so that they cannot be found or taken by the sheriff under the requisition issued to him herein, and with intent that the same should not be so found or taken,' and such allegation is proved upon an inquest on the defendant's default, and is incorporated in the decision, an execution against the person of the defendant may be issued in the event of the return unsatisfied of an execution against his property, notwithstanding that no order of arrest was granted in the action."—*Lehman v. Mayer*, 68 App. Div. 12.

In Foreclosure

of (37 cases of leaf tobacco known as *Connecticut leaf tobacco*), of which an inventory is hereto annexed, marked Schedule "A," and forming part of this complaint.

II. The said chattels were on (*June 2, 1916*), and still are of the value of (\$3,000).

III. That on and prior to (*June 2, 1916*), plaintiff, as such owner, stored the said chattels (*in the warehouse of Rush & Mason in the City of New York*), in his own name, and thereupon negotiable warehouse receipts therefor were delivered to plaintiff. The defendant wrongfully claimed to be the owner of said chattels, instructed the said (*Rush & Mason*) to refuse a delivery of said tobacco to plaintiff, and on said *June 2, 1916*, and prior to the commencement of this action, plaintiff duly demanded from said (*Rush & Mason*) a return and delivery of said chattels, and said (*Rush & Mason*), acting under said instructions of the defendant and as his agent, refused to deliver the said chattels to plaintiff. But thereupon the defendant wrongfully detained and caused to be wrongfully detained all of the said chattels, and that he does still wrongfully detain the same from plaintiff.

IV. Thereafter the defendant surreptitiously and without notice to plaintiff took the said chattels into his actual possession, and said defendant has concealed, removed or disposed of said chattels so that they cannot be found, or taken by the sheriff under the requisition issued to him herein, and with intent that the same should not be so found or taken.

WHEREFORE, the plaintiff demands judgment against the defendant for the delivery of all of the aforesaid chattels, together with (\$2,000) damages for the wrongful detention thereof, or if the delivery of said chattels cannot be made, for the sum of (\$3,000), the value of said chattels, together with the sum of (\$2,000) damages for the wrongful detention thereof, besides the costs and disbursements of this action.

(*WERNER & ENGLAND*),

Attorneys for Plaintiff,

Office and P. O. Address,

(*31 Liberty Street*),

(*New York City*).

(Verification.)

Affidavit and Requisition

SCHEDULE "A."

An inventory of thirty-seven cases of leaf tobacco, known as the Connecticut leaf tobacco, each case being designated by a number marked on the outside thereof, and having the gross weight of the contents of the case and the tare also marked on the outside thereof, and having thereon the mark "M" in a diamond, the said cases being marked by number, gross weight and tare, respectively, as follows:

<i>No. of Case</i>	<i>Gross Weight</i>	<i>Tare</i>
516	1455	194
517	1450	196
518	1418	185

FORM No. 72

Affidavit on Replevin and Requisition*

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	} Plaintiff,
against	
(<i>JOHN DOE,</i>)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN JONES*), being duly sworn, says that he is the plaintiff in this action; that he is the owner of and lawfully entitled to the immediate possession of the following chattels claimed in this action, that is to say: (*two automobiles, touring cars, Panhard make, 1905 model, with Limousine body, 40-horse power and complete equipment, bearing manufacturer's numbers 37608 and 39500*).

* The foregoing form is intended for a case where the affidavit is made at the time of issuing the summons.

Affidavit — Requisition

That the above-named plaintiff has brought this action in this court against the defendant by the issuance of a summons, a copy whereof is hereto annexed, to recover the possession of said chattels. That said summons has not yet been served, and this affidavit is made to accompany said summons.

That the said chattels are wrongfully detained from the plaintiff by (*John Doe*), the defendant herein. That the alleged cause of the detention thereof, according to deponent's best knowledge, information and belief, is as follows:

(Defendant claims a lien upon said property by reason of work done upon other chattels of the same kind heretofore placed in his hands by plaintiff and since returned by him, alleging that the above-mentioned chattels were delivered to him under a single continuing contract, which allegation deponent denies.)

That the said chattels have not been taken by virtue of a warrant against the plaintiff, for the collection of a tax, assessment or fine, issued in pursuance of a statute of the State or of the United States, nor have same been seized by virtue of an execution or warrant of attachment against the property of the plaintiff, or of any person from or through whom the plaintiff had derived title to said chattels since the seizure thereof, and that the actual value of said property, according to the best knowledge and belief of deponent, is (*eight thousand*) dollars (\$8,000).

(*JOHN JONES.*)

Sworn to before me, this }
(*24th*) day of (*July*, 1916). }

(*EDWARD SMITH,*)

Notary Public,

(*New York*) County, (*No. 20*).

To (*Alfred E. Smith*), Esq., sheriff of the County of (*New York*):

You are hereby required to replevy the chattels described in the above affidavit.

Dated, (*New York, July 24, 1916*).

(*WILLIAM SIMPSON,*)

Attorney for Plaintiff,

Office and Post-Office Address,

(*11 Wall Street*),

(*New York City*).

Plaintiff's Undertaking

FORM No. 73

Plaintiff's Undertaking in Action to Recover Chattel

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i> ,)	}
Plaintiff,	
against	
(<i>JOHN DOE</i> ,)	
Defendant.	

WHEREAS (*John Jones*), the plaintiff in this action has made an affidavit that the defendant (*John Doe*) wrongfully detains certain personal property in said affidavit mentioned, of the value of (*eight thousand* (\$8,000)) dollars, and the plaintiff claims the immediate delivery of the said personal property to him, as provided for by Chapter XIV of the Code of Civil Procedure.

NOW, THEREFORE, in consideration of the taking of said property or any part thereof by the sheriff of the County of (*New York*), by virtue of the said affidavit and the requisition thereupon indorsed, we, the undersigned (*John B. Taylor*), of (*No. 22 West First street, Borough of Manhattan, City of New York*), and (*Charles T. Furman*), of (*No. 134 East Fourth street, Borough of Manhattan, City of New York*), and (*John Jones*) of (*No. 16 West Seventieth street, Borough of Manhattan, City of New York*), do hereby jointly and severally undertake and become bound to the defendant in the sum of (*sixteen thousand* (\$16,000) dollars) for the prosecution of the action by the plaintiff, in the (*New York Supreme Court*), against the defendant, for the return to the defendant of the said property if possession thereof is adjudged to him, or if the action abates or is discontinued before the said property is returned to the said defendant, and for the payment to the defendant of any sum which the judgment awards to him against the plaintiff.

Dated, (*New York, July 24, 1916*).

(*JOHN B. TAYLOR.*)
(*CHARLES T. FURMAN.*)
(*JOHN JONES.*)

Plaintiff's Undertaking

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN B. TAYLOR*), one of the sureties named in and subscribers to the foregoing undertaking, being duly sworn, says:

That he is a resident and *free* holder in this State, and is worth the sum of (*thirty-two thousand* (\$32,000)) dollars over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

(*JOHN B. TAYLOR.*)

Signed and sworn to before me, }
this (*24th*) day of (*July*, 1916). }

(*EDWARD SMITH*),

Notary Public,

(*New York*) County, No. (20).

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*CHARLES T. FURMAN*), one of the sureties named in and subscribers to the foregoing undertaking, being duly sworn, says:

That he is a resident and *free* holder in this State, and is worth the sum of (*thirty-two thousand* (\$32,000)) dollars over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

(*CHARLES T. FURMAN.*)

Signed and sworn to before me, }
this (*24th*) day of (*July*, 1916). }

(*EDWARD SMITH*),

Notary Public,

(*New York*) County, No. (20).

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*24th*) day of (*July* 1916) before me personally appeared (*John B. Taylor, Charles T. Furman and John Jones*) to me known and known to me to be the individuals named in and who executed the foregoing undertaking and *they* duly (*severally*) acknowledged to me that they executed the same.

(*EDWARD SMITH*),

Notary Public,

(*New York*) County, No. (20).

VERIFICATION

I. Where a pleading is verified, each subsequent pleading* must be verified, except (generally speaking)

- (1) A demurrer.
- (2) General answer of an infant by his guardian *ad litem*.
- (3) Answer in libel or slander.
- (4) Answer in divorce.
- (5) Where party pleading can be privileged from testifying, as a witness (this exception, however, does not extend to a fraud on creditors nor affect the property rights of others). (See 3 *How. Pr.* 314; 138 *App. Div.* 711; 165 *App. Div.* 885.)

Pleading must be verified:

- II. Where it is desired to enter judgment by default without application to the court. (§ 1213, Code.)
- III. Service is by publication.
- IV. Where it is desired to use the pleading as an affidavit.
- V. (Answer) to prevent inquest for the want of an affidavit of merits.
- VI. Complaint against joint-debtors in an action under § 1938, Code.
- VII. Answer affirmatively alleging that plaintiff or defendant is not a corporation. (§ 1776, Code.)
- VIII. Dilatory defense. (§ 513, Code.)
- IX. If defendants are severally liable, each must verify answer.
- X. Where the complaint is not verified, and the answer sets up a counterclaim, and also a defense by way of denial or avoidance, the verification may be made to refer exclusively to the counterclaim.
- XI. Where the complaint is verified and the answer contains a counterclaim which charges adultery, it must be verified in respect to such counterclaim. (§ 1757, Code.)

* Amended complaint is not a subsequent pleading.

By Party — One of Several Parties

FORM No. 74

Verification — By Party*

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*JOHN JONES*), being duly sworn, deposes and says:

That he is the (*plaintiff*) herein; that he has read the foregoing (*complaint*) and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

(*JOHN JONES.*)

Sworn to before me, this }
 (*fourth*) day of (*June*, 1916). }

(*FANNIE SCHULTZ*.)

Notary Public, No. (30),
 (*New York*) County.

FORM No. 75

Verification — By One of Several Parties United in Interest and Pleading Together

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*JOHN JONES*), being duly sworn, says, that he is one of the (*plaintiffs*) herein; that he has read the foregoing (*complaint*) and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, he believes it to be true, and that he is acquainted with facts of the case.

(*JOHN JONES.*)

Sworn to before me, this }
 (*4th*) day of (*June*, 1916). }

(*FANNIE SCHULTZ*.)

Notary Public, No. (30),
 (*New York*) County.

* There is no difference in the form of a verification, whether the party making, act as an individual or in a representative capacity, as an executor, administrator, trustee, receiver, assignee for benefit of creditors, etc.

Domestic Corporation — Foreign Corporation

FORM No. 76**Verification — By Officer of Domestic Corporation**

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN JONES*), being duly sworn, says:

That he is (*president*) of the (*Columbia Hat Company*), the (*plaintiff*), above named, a domestic corporation, and that he has read the foregoing (*complaint*) and knows the contents thereof, and that the same is true to his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

(*JOHN JONES*.)

Sworn to before me, this }
(*fourth*) day of (*June*, 1916). }

(*FANNIE SCHULTZ*),

Notary Public, No. (30),

(*New York*) County.

FORM No. 77**Verification — By Officer of a Foreign Corporation**

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*GEORGE WAITE*), being duly sworn, deposes and says:

That he is the (*secretary*) of the (*United Steel Company*), the (*defendant*) in the above-entitled action, that he read the foregoing (*answer*) and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. Deponent further says that the reason why this verification is not made by the party and is made by him is that the defendant is a foreign corporation; and the sources of deponent's information and the grounds of his belief as to all matters not therein stated upon his knowledge are as follows: (*Statements and reports of other officers and employees of the*

By Attorney—Party a Foreign Corporation

defendant company, and documents and correspondence in the possession of deponent.)

(GEORGE WAITE.)

Sworn to before me, this }
(19th) day of (December, 1916). }

(ARTHUR FRANCE,)

Notary Public,
(N. Y.) Co.

FORM No. 78

Verification — By Attorney— Reason: Party a Foreign Corporation

STATE OF NEW YORK, }
County of (New York), } ss.:

(JOHN JONES), being duly sworn, says:

That is one of the attorneys for the (*Columbia Hat Company*), the (*plaintiff*) above named, and that he has read the foregoing (*complaint*) and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true; and the reason that this verification is not made by the plaintiff and is made by deponent, is that the plaintiff is a foreign corporation. Deponent further says, that the sources of his information and the grounds of his belief as to all matters therein not stated upon his knowledge are as follows:

(“*Letters received from plaintiff and defendant and personal interviews had with officers of the plaintiff company.*”)

(JOHN JONES.)

Sworn to before me, this }
(fourth) day of (June, 1916). }

(FANNIE SCHULTZ,)

Notary Public, No. (80),
(New York) County.

 Of Answer — Defendant a Foreign Corporation

FORM No. 79
**Verification by Attorney — Foreign Corporation — Answer Denying
Knowledge or Information Sufficient to Form a Belief.***

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*L. M. BERKELEY*), being duly sworn, says that he is the attorney for the above-named defendant; that he has read the foregoing (*answer*) and knows the contents thereof; that the same is true to the knowledge of the deponent, except as to those matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true, and that the reason why this verification is not made by the defendant is that the said defendant is a foreign corporation.

(*L. M. BERKELEY.*)

Sworn to before me, this }
 (20th) day of (*March, 1916.*) }

(*FRANK L. HOLT,*)

Notary Public,

(*New York*) County.

FORM No. 80
**Verification — By Resident Attorney or Agent — Reason: Party Not
Within the County**

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*JOHN JONES*), being duly sworn says:

That he is one of the attorneys for the (*plaintiff*) in this action and resides at (*No. 121 West 11th street, in the City and County of New York*); that he has read the foregoing (*complaint*) and knows the contents thereof, and that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. Deponent further says that the grounds of his belief as to all matters therein not stated upon his knowledge are as follows:

* See *American Audit Co. v. Industrial Federation*, 84 App. Div. 304.

By Attorney or Agent

(" That he has in his possession the promissory notes mentioned in the complaint, and letters from the plaintiff, and letters from defendant acknowledging the defendant's liability thereon and of the notarial certificate of demand and notice of protest given to defendant upon the non-payment of said notes at maturity.")

Deponent further says that the reason why this verification is not made by said (*plaintiff*) is that said (*plaintiff*) is not within the county where such attorney resides.

(JOHN JONES.)

Sworn to before me, this }
(fourth) day of (June, 1916). }

(FANNIE SCHULTZ,)

Notary Public, No. (30),

(New York) County.

Where the attorney resides in the State, but outside the County of New York, *e. g.*, Brooklyn or Staten Island, and has his office in New York County, he may make the verification in New York County by adopting the foregoing form.

FORM No. 81

Verification — By Attorney Non-resident of State — Reason: Party Not Within County

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(FRANK WILSON,) being duly sworn, deposes and says:

That he is the attorney for the (*plaintiff*) in the above-entitled action, and resides at (*Englewood*) in the State of (*New Jersey*), and has his office at (*32 Liberty street*), in the (*Barough of Manhattan, City, County and State of New York*); that he has read the foregoing (*complaint*) and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. Deponent further says that the sources of his information and the grounds of his belief as to all matters therein not stated upon his knowledge are as follows:

By Attorney or Agent

(Correspondence with the plaintiff and books, documents, and letters from the defendant to the plaintiff acknowledging his liability thereon and promising to pay the same, in his possession, and statements made by the employees of plaintiff.)

Deponent further says that the reason why this verification is not made by the (plaintiff) and is made by the deponent is that the said (plaintiff) is not within the County of (New York), the county where deponent has his office.

(FRANK WILSON.)

Sworn to before me, this }
(21st) day of (June, 1916). }

(ELI SMITH,)

Notary Public, No. (31),
(New York) County.

FORM No. 82

Verification — By Attorney or Agent — Reason: Party Incapable

STATE OF NEW YORK, }
County of (New York), } ss.:

(JOHN JONES,) being duly sworn, says:

That he is one of the attorneys for the (plaintiff) in this action and resides at (No. 121 West 11th street, in the City and County of New York); that he has read the foregoing (complaint) and knows the contents thereof, and that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. Deponent further says that the grounds of his belief as to all matters therein not stated upon his knowledge are as follows:

("That he has in his possession the promissory notes mentioned in the complaint, and letters from the plaintiff, and letters from defendant acknowledging the defendant's liability thereon, and of the notarial certificate of demand and notice of protest given to defendant upon the non-payment of said notes at maturity.")

Deponent further says that the reason why this verification is not made by said plaintiff is that said plaintiff is not capable

By Attorney — Written Instrument in His Possession

of making this verification, by reason of the fact that said plaintiff is now confined to his house, suffering from severe illness, and under the advice of physicians cannot be seen as appear by the affidavit of Henry Archer, M. D., hereto attached and made a part of this affidavit.

(JOHN JONES.)

Sworn to before me, this }
(fourth) day of (June, 1916). }

(FANNIE SCHULTZ),

Notary Public, No. (30),

(New York) County.

FORM No. 83

Verification — When Action is Founded upon Written Instrument for
the Payment of Money — In Possession of Attorney

STATE OF NEW YORK, }
County of (New York,) } ss.:

(JOHN JONES), being duly sworn, says:

That he is one of the attorneys for the (*plaintiff*) herein; that he has read the foregoing (*complaint*) and knows the contents thereof, and that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true; that this action is founded upon a written instrument for the payment of money only, now in deponent's possession, which instrument is the source of deponent's information, and the grounds of his belief.

(JOHN JONES.)

Sworn to before me, this }
(fourth) day of (June, 1916). }

Notary Public, No. 30),

(FANNIE SCHULTZ),

(New York) County.

By Attorney

FORM No. 84

**Verification — By Attorney Where All the Material Allegations are
Within His Personal Knowledge**

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*JOHN JONES*), being duly sworn, says:

That he is one of the attorneys for the (*plaintiff*) herein; that he has read the foregoing (*complaint*) and knows the contents thereof, and that the same is true to the knowledge of the deponent, and that all the allegations in the complaint are within the personal knowledge of the deponent.

(*JOHN JONES*.)

Sworn to before me, this }
(4th) day of (*June*, 1916.) }

(*FANNIE SCHULTZ*),

Notary Public, No. (30),

(*New York*) County.

FORM No. 85

**Verification — Domestic Corporation — Non-resident Attorney —
Reason: Officer Not Within County Where Attorney has Office and
Capable of Making Affidavit**

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*JAMES WATSON*), being duly sworn, deposes and says:

That he is one of the attorneys for the (*plaintiff*) in the above-entitled action, and resides at (*Englewood*,) in the State of (*New Jersey*,) and has his office at (*32 Liberty Street, Borough of Manhattan, City, County and*) State of New York; that he has read the foregoing (*complaint*) and knows the contents thereof; that the same is true to the knowledge of deponent, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Deponent further says that the grounds of his belief as to all matters therein stated upon his own knowledge are as follows:
(*Correspondence with the plaintiff; books and documents of the*

By Attorney

plaintiff; letters from the defendant to the plaintiff wherein the defendant acknowledges his liability, now in deponent's possession; and statements made by the employees of plaintiff to deponent.)

Deponent further says that the reason why this verification is not made by the said (*plaintiff*) is that the said (*plaintiff*) is a domestic corporation having its principal place of business located at (*Buffalo, Erie County,*) State of (*New York,*) and that the (*plaintiff,*) and each of the officers of the (*plaintiff,*) is not within the County of (*New York,*) the County where deponent has his office.

(JAMES WATSON.)

Sworn to before me, this }
(4th) day of (*June, 1916.*) }

(FRANK SMITH,)

Notary Public, (No. 30),
(*New York*) County.

FORM No. 86

Verification — Domestic Corporation — By Resident Attorney —
Reason: Neither Corporation Nor Officer Within County of
Attorney's Residence

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(JAMES WATSON,) being duly sworn, says: That he is one of the attorneys for the (*plaintiff*) in the above-entitled action, and resides at (*772 West 70th Street, in the Borough of Manhattan, City, County*) and State of New York. That he has read the foregoing (*complaint*) and knows the contents thereof; that the same is true to the knowledge of deponent, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Deponent further says that the grounds of his belief as to all matters therein not stated upon his knowledge, are as follows: (*Correspondence with the plaintiff and books and documents in his possession together with letters, likewise in his possession*

By Attorney

from the defendant to the plaintiff, wherein the defendant acknowledges his liability and statements made by the employees of plaintiff to deponent.)

Deponent further says that the reason why this verification is not made by the said (*plaintiff*) is that the said (*plaintiff*) is a domestic corporation, having its principal place of business located at (*Buffalo, Erie County,*) and that the (*plaintiff*) and each of the officers of the (*plaintiff*) is not within the said County of (*New York,*) the county where deponent resides.

(*JAMES WATSON.*)

Sworn to before me, this }
(4th) day of (*June, 1916.*) }

(*FRANK SMITH,*)

Notary Public, (*No. 30,*)

(*New York*) County.

FORM No. 87

Verification — Domestic Corporation — By Resident Attorney —
Reason: Neither Corporation Nor Officers Within County of
Attorney's Residence and Capable of Making Affidavit

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*JAMES WATSON,*) being duly sworn, says: That he is one of the attorneys for the (*plaintiff*) in the above-entitled action, and resides at (*772 West 70th Street, in the Borough of Manhattan, City, County*) and State of New York. That he has read the foregoing (*complaint*) and knows the contents thereof; and that the same is true to deponent's knowledge except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Deponent further says that the grounds of his belief as to all matters therein not stated upon his knowledge, are as follows: (*Correspondence between deponent and the plaintiff; books and documents of the plaintiff, letters from the defendant to the plaintiff, wherein the defendant acknowledges his liability, now in deponent's possession, and statements made by the employees of plaintiff to deponent.*)

Counterclaim in Divorce

Deponent further says that the reason why this verification is not made by the said (*plaintiff*) is that the said (*plaintiff*) is a domestic corporation, having its principal place of business located at (*Buffalo, Erie County,*) and that the (*plaintiff*) and each of the officers of the (*plaintiff*) is not within the said County of New York, the county where deponent resides.

(JAMES WATSON.)

Sworn to before me, this }
(4th) day of (*June, 1916.*) }

(FRANK SMITH,)

Notary Public,
(*New York*) County.

FORM No. 88

**Verification of Counterclaim in Action for Divorce Charging Adultery
Where the Complaint is Verified***

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN JONES,*) being duly sworn, says: That he is the defendant herein; that he has read the (*counterclaim contained in the answer*) herein and knows the contents thereof and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

(*JOHN JONES.*)

Sworn to before, me this }
(20th) day of (*August, 1916.*) }

(FANNIE SCHULTZ,)

Notary Public, No. (30),
(*New York*) County.

*Required by § 1757, Code.

Notice as to Defective

The usual practice where a pleading is served without a sufficient verification is to return the pleading within twenty-four hours with a notice indorsed thereon similar to the following:

FORM No. 89

Notice as to Defective Verification*

SUPREME COURT,
(*New York*) County.

(*JAMES KAY,*)

Plaintiff,

against

(*WILLIAM TAYLOR,*)

Defendant.

SIR:

PLEASE TAKE NOTICE that the within (*answer*) is hereby returned to you and that plaintiff elects to treat the same as a nullity on the ground that it is served without a copy of a sufficient verification (*in that the affidavit annexed thereto and purporting to be a verification is not signed and not sworn to*).

(*FRANK BUSH,*)

Attorney for (*plaintiff,*)

(*32 Liberty Street,*

New York City.)

Dated, (*New York, March 10, 1916.*)

To

(*WALLACE McCUE,*)

Attorney for (*defendant.*)

*55 Misc. 533.

SECURITY FOR COSTS

The most common ground for an application for security for costs is that the plaintiff is a non-resident or foreign corporation; for other grounds, see § 3268, Code.

Application for security for costs may now be made *at any time*. (§ 3272, Code; as amended by Laws 1915, Chap. 635.)

Security for costs may be required in special proceedings as well as in actions. (§ 3279, Code.)

If there are two or more plaintiffs, the defendant cannot require security for costs to be given, unless he is entitled to require it of all the plaintiffs. (§ 3270, Code.)

In the City Court of the City of New York it must affirmatively appear that the plaintiff has no place of business in the boroughs of Manhattan and Bronx. (46 *Misc.* 419. See also 64 *Misc.* 34; 66 *Misc.* 189, 190.)

For complete discussion as to what proof of non-residence may be presented, see, Abbott's Practice and Forms, 2nd Ed. p. 666. See also, (87 *Misc.* 194; 104 *App. Div.* 21.)

That Guardians *ad litem* cannot be required to give security, see (69 *Misc.* 69.)

If application is made under § 3268, Code, it is as matter of right and notice is not necessary, the Statute contemplates an *ex parte* application to the Court but if made under § 3271, Code (which is discretionary), plaintiff is entitled to notice. (160 *App. Div.* 14.)

If plaintiff is a non-resident and has no property in the State, the motion should be granted even if the matter is discretionary. (117 *App. Div.* 129.)

Where plaintiffs are non-residents, defendant is entitled to security as matter of right under § 3268, irrespective of the capacity in which they sue. (52 *Misc.* 632.) Even in a case where defendant is a foreign corporation. (63 *Misc.* 524.)

FORM No. 90

Order Requiring Security for Costs — Non-resident

(CITY COURT OF THE CITY OF NEW YORK.)

(PHILIP PHOENIX,)

Plaintiff,
against

(VERNON VERMILYEA,)

Defendant.

On reading and filing the affidavits of (*Vernon Vermilyea*), verified the (19th) day of (*March, 1916*), and (*Robert Reeves*), verified the (16th) day of (*March, 1916*), and it appearing that the plaintiff is and was at the time of the commencement of this action a non-resident of the State of New York, and on motion of (*Lorillard Lewis*) attorney for the defendant,

ORDERED, that the plaintiff, within (*ten*) days after service of a copy of this order upon his attorney, pay into Court the sum of \$250, to be applied to the payment of costs, if any, awarded against him, or in lieu thereof file with the clerk of this Court an undertaking executed to the defendant by one sufficient surety to be approved by the Court that such surety will pay to the defendant, upon demand, all costs which may be awarded to him in this action, not to exceed the sum of two hundred and fifty dollars (\$250), and also within said (*ten*) days serve upon the attorney for the defendant a written notice of such payment or of the filing of such undertaking, and

FURTHER ORDERED, that all proceedings on the part of the plaintiff herein, except to review or vacate this order, are hereby stayed until the payment of said sum or the filing of such undertaking and notice thereof, and the allowance of such undertaking, and

FURTHER ORDERED, that the time of the defendant to answer, demur, or otherwise move with reference to the complaint herein, be extended until (*six*) days after the terms of this order have been complied with.

Dated, New York, (*March 19, 1916*).

(EDWARD B. LA FETRA,)

C. C. J.

Affidavit to Obtain — Non-resident

FORM No. 91

Affidavit to Obtain Order for Security for Costs — Non-Residence
(CITY COURT OF THE CITY OF NEW YORK.)

(PHILIP PHOENIX,)	} Plaintiff,
against	
(VERNON VERMILYEA,)	
Defendant.	

STATE OF NEW YORK, } ss.:
County of (*New York*), }

(VERNON VERMILYEA,) being duly sworn, says:

That he is the defendant herein; that this action was commenced against deponent by the service of a summons and complaint on the (15th) day of (*January*, 1916,) and deponent has appeared herein by (*LORILLARD LEWIS*), his attorney.

Deponent further says that at the time of the commencement of this action the plaintiff was and still is a non-resident of the State of New York, and has no place for the regular transaction of business in the Boroughs of Manhattan and Bronx in the city of New York, but is a resident of the State of (*New Jersey*); that the plaintiff (*has a house in Montclair, N. J., where he has actually lived and had his residence for the past five years, and has during said time been employed as a traveling salesman by the Excelsior Paint Company, whose place of business is at 96 Water street, Borough of Manhattan, New York City; that said plaintiff has paid taxes on both real and personal property in Montclair, N. J., for the past five years, and has also been a registered voter in said village,*) all of which facts as to the residence of said plaintiff more fully appear by the affidavit of (*Robert Reeves*), verified the (17th) day of (*March*, 1916,) hereto attached.* That no previous application has been made for the order herein applied for.

(VERNON VERMILYEA.)

Sworn to before me, this }
(17th) day of (*March*, 1916). }

(DELPHIN DALTON,)

Notary Public,

(*N. Y.*) County.

*If extension of time desired, set forth facts justifying an affidavit of merits (49 Misc. 334).

FORM No. 92

Order Requiring Security for Costs — Plaintiff Non-resident

At a Special Term (*Part II*) of the Supreme Court held in and for the County of (*New York*) at the County Court House in the (*Borough of Manhattan, City of New York,*) on the (23d) day of (*December, 1914.*)

PRESENT:

Hon. (*LEONARD A. GEIGERICH,*)

Justice.

(JOHN STARR,)

against

Plaintiff,

(*MAY BOWER,*) and (*HARRY BOWER,*)

Defendants.

On reading and filing the affidavit of (*Martin E. Muller,*) verified the (23d) day of (*December, 1914*) whereby it appears that the plaintiff is and was at the commencement of this action a non-resident of the State of New York, it is

ORDERED that the plaintiff within ten (10) days after the service upon his attorney of a copy of this order either pay into this Court the sum of Two Hundred Fifty Dollars (\$250.00) to be applied to the payment of costs, if any, awarded against him, or, at his election, file with the Clerk of this Court, an undertaking to be executed to the defendants with sufficient sureties, to be approved by the Court, to the effect that they will pay upon demand to the defendants all costs which may be awarded to them in this action, not exceeding Two Hundred Fifty Dollars (\$250.00) and shall also within the time aforesaid serve a written notice of such payment, or filing upon the defendant's attorneys; and it is further

ORDERED, that all proceedings on the part of the plaintiff herein be and they hereby are stayed, except to review or vacate this order, until the payment of said money, or the filing of such undertaking and notice thereof and also, if an undertaking shall be given, until the allowance of the same.

Enter,

(L. A. G.)

J. S. C.

Affidavit to Obtain — Non-resident

FORM No. 93

Affidavit to Obtain Order for Security for Costs — Plaintiff Non-resident

SUPREME COURT,
(*New York*) County.

(*JOHN STARR,*)

Plaintiff,
against

(*MAY BOWER and HARRY
BOWER,*)

Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*MARTIN E. MULLER,*) being duly sworn, says: that he is the attorney for the defendants, (*May Bower and Harry Bower,*) in the above-entitled action. That this action was commenced by the service of a summons and complaint on or about (*September 10, 1914*). That an amended complaint was served herein on the (*19th*) day of *October, 1914*. That this cause is now at issue. (*That the said complaint, as well as the amended complaint, was verified by one Isadore L. Tudor. That the verification contained this statement: "That the reason why this verification is not made by the plaintiff is that the plaintiff is not within the State or County of New York being at the present time in Australia." That the said plaintiff was a stranger to deponent and to the defendants Bower, in this action and his residence unknown to either. That on or about the 11th day of December, 1914, an application was made herein for the examination of the defendants before trial. That upon such application and affidavit was made by George Taylor, one of the attorneys for the plaintiff herein, in which this statement is made: "That the plaintiff resides in Newcastle, Australia, and the defendants are all residents of this State." That the statement in said affidavit was the first actual information given to deponent as to the actual residence of the plaintiff in this action.*)

Deponent therefore states that the said plaintiff is a non-resident of the State of New York and was such at the commencement of this action. Deponent therefore asks that an order be

Order for — Foreign Corporation

made herein requiring the plaintiff within (*ten*) days either to pay into the Court the sum of Two Hundred Fifty Dollars (\$250.00) to be applied to the payment of the costs if any are awarded against him, or to file with the Clerk an undertaking as security for the payment of all costs that may be awarded against the plaintiff and staying all other proceedings on the part of the plaintiff, except to review or vacate said order until the payment or filing and notice thereof pursuant to the provisions of the Code of Civil Procedure. That no previous application has been made for the order applied for.

(*MARTIN E. MULLER.*)

Sworn to before me this }
(23rd) day of *December*, 1914.) }

(*CONRAD TOWNSEND,*)

Notary Public,

(*New York*) County, No. (465.)

FORM No. 94

Order Requiring Security for Costs — Plaintiff Foreign Corporation

At a Special Term (*Part II*) of the Supreme Court held in and for the County of (*New York*) at the Court House thereof in the (*Borough of Manhattan, City of New York,*) on the (*20th*) day of (*April*, 1916.)

PRESENT:

Hon. (*LEONARD A. GEIGERICH,*)

Justice.

(*THE WHITE COLLAR COM-
PANY,*)

against Plaintiff,

(*WILLIAM COX,*)

Defendant.

On reading and filing the affidavit of (*William Cox,*) verified the (*19th*) day of (*April*, 1916,) whereby it appears that the plaintiff is and was at the commencement of this action a foreign

Affidavit to Obtain — Foreign Corporation

corporation created by and under the laws of the State of (*Delaware*,) it is

ORDERED that the plaintiff within ten (10) days after the service upon its attorney of a copy of this order, either pay into this Court the sum of Two Hundred Fifty Dollars (\$250.00) to be applied to the payment of costs, if any, awarded against it, or at its election, file with the Clerk of this Court, an undertaking to be executed to the defendant with sufficient sureties, to be approved by the Court, to the effect that they will pay upon demand to the defendant all costs which may be awarded to it in this action, not exceeding Two Hundred Fifty Dollars (\$250.00) and shall also within the time aforesaid serve a written notice of such payment, or filing upon the defendant's attorney; and it is further

ORDERED: That all proceedings on the part of the plaintiff herein be and they hereby are stayed except to review or vacate this order until the payment of said money, or filing of such undertaking and notice thereof and also if an undertaking shall be given until the allowance of the same.

Enter,

(*L. A. G.*)

(*J. S. C.*)

FORM No. 95

Affidavit to Obtain Security for Costs — Plaintiff Foreign Corporation

SUPREME COURT,

(*New York*) County.

(*THE WHITE COLLAR COMPANY*,)

Plaintiff,

against

(*WILLIAM COX*,)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM COX*,) being duly sworn, deposes and says:

1. That he is the defendant herein. That this action was commenced against deponent on the (*17th*) day of (*April*, 1916) by

Affidavit to Obtain — Foreign Corporation

the service of a summons and complaint, and deponent has duly appeared herein by (*Frank Stone*,) his attorney.

2. That plaintiff above named is a foreign corporation, created by and under the laws of the State of (*Delaware*,) as appears by an allegation contained in the complaint of the plaintiff herein, verified by (*William White as president of the*) plaintiff.

Deponent therefore asks that an order be made herein, requiring the plaintiff within (*ten*) days either to pay into Court the sum of Two Hundred Fifty (\$250.00) Dollars to be applied to the payment of the costs, if any are awarded against it, or to file with the Clerk an undertaking pursuant to the provisions of the Code of Civil Procedure, as security for the payment of all costs that may be awarded against the plaintiff and staying all proceedings on the part of the plaintiff, except to review or vacate said order until such payment or filing and service upon defendant's attorney of written notice thereof, pursuant to the provisions of the Code of Civil Procedure. That no previous application has been made for the order applied for.

(*WILLIAM COX.*)

Sworn to before me, this }
(19th) day of (*April*, 1916.) }

(*HERMAN FREDERICKS,*)

Notary Public,
(*New York*) County.

AFFIDAVIT OF MERITS

Affidavit by one of several parties is sufficient.

This form and the three following forms may be used when the motion is for relief to which a party is *not* entitled as a matter of right. Rule 23, G. R. P., but not for application for extension of time to plead or to open a default, *Rothschild v. Haviland*, 172 App. Div. 562.

For forms upon application for extension of time, see pp. 369, 372, 375.

FORM No. 96

Affidavit of Merits, by Party Plaintiff

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i> ,)	} Plaintiff,
against	
(<i>JOHN DOE</i> ,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN JONES*,) being duly sworn, says that he is the plaintiff in the above-entitled action; that he has fully and fairly stated the case to (*Alexander Duffield*), his counsel herein, whose office is at No. (120 *Broadway*) in the (*Borough of Manhattan, City of New York*,) and that he has a good and substantial cause of action upon the merits, against the defendant as he is advised by said counsel after such statement, and verily believes to be true, and that he intends to prosecute this action in good faith.

(*JOHN JONES*.)

Sworn to before me, this }
(18th) day of (*May*, 1916.) }

(*RICHARD ROE*,)

Notary Public,
(*New York*) County, No. (786.)

By Party Defendant

FORM No. 97

Affidavit of Merits, by Party Defendant

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i> ,)	} Plaintiff,
against	
(<i>JOHN DOE</i> ,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN DOE*,) being duly sworn, says: That he is the defendant in the above-entitled action; that he has fully and fairly stated the case to (*Alexander Duffield*), his counsel herein, whose office is at No. (120 *Broadway*) in the (*Borough of Manhattan, City of New York*), and that he has a good and substantial defense on the merits to the action, as he is advised by his said counsel after such statement and verily believes to be true, and he intends to defend this action in good faith.

(*JOHN DOE*.)

Sworn to before me, this }
(18th) day of (*May*, 1916.) }

(*RICHARD ROE*,)

Notary Public,

(*New York*) County, No. (245.)

See Note on p. 365.

By Counsel for Plaintiff

FORM No. 98

Affidavit of Merits, by Counsel for Plaintiff

SUPREME COURT,
(*New York*) County.

(MARY DICK,)

Plaintiff,

against

(JONES NAIL COMPANY,)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(DONALD CHESTER,) being duly sworn, deposes and says, that he is an attorney-at-law and of counsel for the plaintiff above named and has offices at No. (54 *Wall Street*,) in the (*Borough of Manhattan, City*,) County and State of New York.

That the plaintiff has fairly and fully stated the facts of the case to deponent and from said statement deponent verily believes, and has so advised plaintiff, that (*she*) has a good and substantial cause of action upon the merits against the defendant, and (*she*) intends to prosecute this action in good faith.

(DONALD CHESTER.)

Sworn to before me, this }
(13th) day of (*May*, 1916.) }

(FRANCIS LAMB,)

Notary Public,

(*New York*) County, No. (207.)

See Note, p. 365.

By Counsel for Defendant

FORM No. 99

Affidavit of Merits, by Counsel for Defendant

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i> ,)	} Plaintiff,
against	
(<i>JOHN DOE</i> ,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*ALEXANDER DUFFIELD*,) being duly sworn, deposes and says: That he is an attorney and counsellor at law and has been retained to defend this action for the defendant herein, and has offices at (*No. 2 Rector Street*,) in the (*Borough of Manhattan, City*,) County and State of New York, and that said defendant has fully and fairly stated the facts of the case to deponent, and after such statement so made, deponent verily believes, and has so advised defendant, that (*he*) has a good and substantial defense upon the merits to the cause of action set forth in the complaint, and that defendant intends to defend this action in good faith.

(*ALEXANDER DUFFIELD*.)

Sworn to before me, this }
(*19th*) day of (*May*, 1916.) }

(*RICHARD ROE*,)

Notary Public,

(*New York*) County, (*No. 345*.)

See Note, p. 365.

By Counsel for Plaintiff — Defense to Counterclaim

FORM No. 100

Affidavit of Merits by Counsel for Plaintiff — Counterclaim
Interposed — Applying for Extension of TimeSUPREME COURT,
(*New York*) County.

(JOHN DOE,)

Plaintiff,

against

(RICHARD ROE,)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(JOHN WHITCOMB,) being duly sworn, says:

I. That he is an attorney-at-law and of counsel for the plaintiff above named and has offices at (*No. 60 Wall Street, Borough of Manhattan, City, County*) and State of New York.

II. That the plaintiff has fully and fairly stated the facts of the case to deponent and from said statement, deponent verily believes, and has so advised the plaintiff, that he has a good and substantial defense upon the merits to the cause of action set forth as a counterclaim contained in answer.

III. The counterclaim is interposed to (*recover the sum of Five Thousand (\$5,000) Dollars damages for breach of contract.*)

IV. The answer herein was served upon the plaintiff's attorney on (*January 3, 1916*). (*Walter Greene*) who is a member of the firm of (*Whitcomb & Greene*), attorneys for plaintiff, and who has had charge of this case from its inception, and who is the only member of this firm who is familiar with it, (*has been actually engaged in business out of town. Because of such fact this firm will be unable to prepare and serve a reply or demurrer before the time expires on January 23, 1916.*)

V. No extension of time to reply or demur by stipulation or order has been granted. Deponent therefore asks that the time of the plaintiff to reply, demur or otherwise act with relation to

By Counsel for Plaintiff—Defense to Counterclaim

the answer be extended *ten* (10) days from the (23rd) day of
(*January*, 1916.)

(*JOHN WHITCOMB.*)

Sworn to before me, this }
(20th) day of (*January*, 1916.) }

(*ALICE MARCH,*)

Notary Public,

(*New York*) County, No. (467.)

EXTENSION OF TIME

Where no extension of time to plead has been granted by stipulation or order, an extension of time is usually granted *ex parte* as a matter of course.

When the time to plead has been extended by stipulation or order for twenty days, no further time shall be granted by order, except upon giving two days' notice of the application for the order extending time to adverse party. (Rule 24, *G. R. P.*)

In an action against a corporation on a promissory note or other evidence of debt, an order extending the time to answer or demur, will not be granted except by the Court, upon notice to the plaintiff's attorney. (§ 1778, Code.)

FORM No. 101

Stipulation Extending Time to Plead

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	} Plaintiff,
against	
(<i>JOHN DOE,</i>)	
Defendant.	

It is hereby stipulated that the time for the defendant to answer, demur or make any motion with relation to the summons and complaint, is hereby extended to and including the (23rd) day of (*May*, 1916).

Dated, (*May 3rd*, 1916.)

(*WILLIAM BAILEY,*)
Attorney for Plaintiff.

To Plead

FORM No. 102

Order Extending Time to Plead .

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i> ,)	} Plaintiff,
against	
(<i>JOHN DOE</i> ,)	
Defendant.	

On the annexed affidavit of (*Theodore Williams*), duly verified (*December 19, 1915*) and the summons and complaint and notice of appearance herein, it is

ORDERED, that the time of the defendant herein in which to answer, demur to or make any motion with relation to the complaint herein be extended to and including (*January 9th, 1916*).

Dated, (*December 20, 1915*.)

(*JOHN FORD*,)

(*Justice of the Supreme Court of the State of New York.*)

FORM No. 103

Affidavit to Obtain Extension of Time to Plead*

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i> ,)	} Plaintiff,
against	
(<i>JOHN DOE</i> ,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*THEODORE WILLIAMS*,) being duly sworn, says:

I am (*one of the attorneys*) retained to defend the above-entitled action for the defendant herein. I have an office at (*No.*

* This affidavit must be made by the attorney. (Rule 24, G. R. P.)

To Plead — Affidavit

2 Rector Street, Borough of Manhattan, City of New York). The defendant above named has fully and fairly stated the facts of the case to me, and after such statement to me made by said defendant, I verily believe, and have so advised the defendant, that said defendant has a good and substantial defense upon the merits to the cause of action set forth in the complaint and intends to defend this action in good faith.

This action is brought (*to recover the sum of (\$5,000) damages for breach of contract.*)

The complaint herein was served on the defendant on (*December 1, 1915*), and defendant has appeared by (*Percy & Williams*), his attorneys. (*Mr. John R. Percy, who has had charge of this case and has made a special investigation of the transactions and circumstances involved for the purpose of preparing an answer, has been actually engaged in Court constantly for the past five days, and by reason of such engagements and the press of other professional matters requiring his immediate attention, will be unable to prepare and serve an answer herein before December 21, 1915, when defendant's time to answer expires. The facts and circumstances out of which this case arose cover transactions and correspondence of a period of several years, and no one in my office except Mr. Percy is sufficiently familiar with them to properly prepare an answer.*)

No extension of time to answer or demur to move herein, has been granted by stipulation or order. That no previous application has been made for such extension to any court or Judge. Deponent therefore asks that the time of the defendant (*John Doe*) to answer or demur or otherwise move with relation to the complaint, be extended 20 days from the (*21st*) day of (*December, 1915*).

(*THEODORE WILLIAMS.*)

Sworn to before me, this }
(*19th*) day of (*December, 1915.*) }

(*ARCHIE DUNN,*)

Notary Public,
(*New York*) County.

 To Plead — Affidavit by Party

FORM No. 104

Affidavit to Obtain Extension of Time to Plead — By Party *

 SUPREME COURT,
 (New York) County.

(JOHN JONES,)	} Plaintiff,
against	
(JOHN DOE,)	
Defendant.	

 STATE OF NEW YORK, }
 County of (New York), } ss.:

(JOHN DOE,) being duly sworn, says:

That he is the defendant in the above-entitled action.

(That he was compelled to leave the City of New York, in which he resides, on business immediately after the service of the summons and complaint herein upon him on the 1st day of July, 1915; that he remained absent for 18 days, and since his return he had not had sufficient time to instruct his counsel concerning his answer in this case,) and that (20) days further time is necessary (therefor;) that the time to answer expires on the 20th day of July, 1915, and no extension of time has been obtained herein by consent, stipulation or otherwise, or applied for.

(JOHN DOE.)

 Sworn to before me, this }
 (19th) day of (July, 1915.) }

(WILLIAM TYSON,)

Notary Public,

(New York) County, No. (234).

* This affidavit must be accompanied by an affidavit by the attorney retained by the defendant to defend the action, similar to Form p. 375. (Rule 24, G. R. P.)

To Plead — Affidavit by Attorney

FORM No. 105

Affidavit to Obtain Extension of Time to Plead — By Attorney to
Accompany that of PartySUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i> ,)	} Plaintiff,
against	
(<i>JOHN DOE</i> ,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(CLINTON GRAY,) being duly sworn, says:

That he is the attorney for the defendant in this action and has been retained by him to defend the same; and that his office is at (*No. 2 Rector Street*) in the (*Borough of Manhattan, City of New York*). That the defendant has fully and fairly stated the facts of the case to him and from the statement of the case so made to him by the defendant, he verily believes, and has so advised defendant, that (*he*) has a good and substantial defense upon the merits to the cause of action set forth in the complaint.

That the complaint sets forth a cause of action for (*damages for breach of a contract of employment for the period of one year through the alleged wrongful discharge of the plaintiff by the defendant; the recovery asked for being the sum of \$2,400, which is the amount of ten months' salary under the terms of said contract.*) That deponent has appeared in this action on behalf of the defendant, but has neither obtained nor applied for any extension of time to demur, answer, or make any motion with reference to the summons and complaint by stipulation or otherwise.

(CLINTON GRAY.)

Sworn to before me, this }
(19th) day of (*July*, 1914.) }(WILLIAM TYSON,)
Notary Public,
(*New York*) County, No. (234).

MOTIONS RELATING TO PLEADINGS

Motions to strike out irrelevant, redundant or scandalous matter and motions to correct a pleading on the ground of its being "so indefinite or uncertain that the precise meaning or application is not apparent" must be made before demurring or answering the pleading, and within twenty days from the service thereof. And the time to make such motion will not be extended unless at least two days notice of the application therefor, stating the time and place thereof, be given the adverse party. (Rule 22, G. R. P.) The notice of motion must specify the precise parts which are to be stricken out and it is common practice to indentify the matter by referring to the paragraph and by setting forth the objectionable part together with the words immediately preceding and immediately following. Procuring an order extending time to answer, is a waiver of the right to move to strike out irrelevant matter, unless the right to make the motion is given by the order. And an answer, served after notice of motion to strike out irrelevant matter in the complaint, waives the motion. Such a motion cannot be combined with a motion for a bill of particulars even in the alternative. (118 *App. Div.* 830.)

The motion is determined on an inspection of the pleadings.

On applications for judgment on ground that demurrer, answer or reply is frivolous, (§ 537, Code,) affidavits cannot be used, but the motion must be determined solely by an inspection of the pleadings. The method of procedure has fallen into disuse since the enactment of § 547 Code, providing for motions for judgment on the pleadings.

On motion to strike out sham answer or sham defense, a verified denial* cannot be stricken out as sham, nor can a counterclaim.

A frivolous pleading is one which is so manifestly insufficient in law as to require no argument to demonstrate its insufficiency.

* It matters not whether the denial be absolute in form, on information and belief, or that the defendant has not knowledge or information sufficient to form a belief, or in any form authorized by the Code in an action at law or in equity.

 Notice of Motion

A sham pleading on the other hand, is one which is false in fact, although it may be good in law, so palpably *false in fact as to involve* no matter of substantial litigation. They are alike in one respect, that they make no issue requiring a trial. In the case of frivolous pleading, this is and must be apparent on the face thereof. In the case of a sham pleading, it must generally be shown by extraneous matter.

A verified general denial will never be stricken out as sham.

"A sham answer or defense is one false in point of fact and not pleaded in good faith, but yet may be good in form. (*Brown v. Jenison*, 3 *Lans.* 732.)

See also Note on Dilatory Answers, p. 398.

See also Note on Disposition of Demurrers, p. 416.

See also Note on Motions for Judgment on the pleadings, p. 431.

 FORM No. 106

Notice of Motion to Strike Out a Sham Defense and for Judgment on the Pleadings

SUPREME COURT,
(*New York*) County.

(CHARLES SIMMS,)	}
Plaintiff,	
against	
(EMIL MEYER,)	
Defendant.	

TAKE NOTICE that on the annexed affidavit of (*James Williams*), sworn to the (29th) day of (*July*, 1916), the answer and all the pleadings and proceedings herein, the undersigned will move this Court at a Special Term, (*Part 1*), to be held at the County Court House in the (*Borough of Manhattan, City of New York*,) on the (10th) day of (*August*, 1916), at 10:30 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard for an order striking out the separate defense set up in the answer herein as sham, and for judgment on the complaint and remaining portion of the answer after striking out such separate defense upon the ground that such remaining portion of the answer is frivolous in that it appears upon the face thereof that it denies

Affidavit on Motion

no material allegation of the complaint as well as that it otherwise appears to have been interposed and set up for the purpose of delay and of vexation to the plaintiff; and for such other and further relief as may to the Court seem just, and for the costs of this motion.

Dated, (*New York, July 29, 1916.*)

(*WILLIAMS & HAYES,*)

Plaintiff's Attorneys,

(*68 William Street,*)

(*New York City.*)

To Messrs. (*WOOD & HILL,*)

Defendant's Attorneys.

FORM No. 107

Affidavit on Motion to Strike Out a Sham Defense and for Judgment

SUPREME COURT,

(*New York*) County.

(*CHARLES SIMMS,*)

Plaintiff,

against

(*EMIL MEYER,*)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JAMES WILLIAMS*), being duly sworn, says that he is one of the attorneys for the plaintiff herein; that this action was commenced by the service of the summons herein on the defendant, (*Emil Meyer*) on the (20th) day of (*June, 1916*); that the complaint herein was served on the (20th) day of (*June, 1916*); that thereafter and on the (8th) day of (*July, 1916*), the answer herein was served upon the plaintiff's attorneys.

That deponent has read said answer interposed herein by the said defendant and that the defense of (*payment*) therein set up

Order

is wholly and absolutely false and sham as deponent verily believes for the following reasons: (State reasons.)

(JAMES WILLIAMS.)

Sworn to before me, this }
(29th) day of (July, 1916.) }

(DAVID GORDON),

Notary Public,
(New York) County.

FORM No. 108

Order — Striking Out Sham Defense and Granting Judgment

At a Special Term (*Part I*) of the Supreme Court held in and for the County of (*New York*.) at the County Court House in the (*Borough of Manhattan, City of New York*) on the (10th) day of (*August, 1916*).

PRESENT:

Hon. (LEONARD A. GIEGERICH),

Justice.

SUPREME COURT,
(*New York*) County.

(CHARLES SIMMS,)

Plaintiff,

against

(EMIL MEYER,)

Defendant.

On reading and filing the affidavit of (*James Williams*), verified the (29th) day of (*July, 1916*), and notice of motion thereto attached dated (*July 29, 1916*), and upon the complaint, answer, heretofore filed herein and the affidavit of (*John Wood*) in opposition and all the pleadings herein, and after hearing (*James Williams*), counsel for plaintiff in support of said motion, and (*John Wood*), counsel for defendant in opposition thereto, and it appearing to me that said answer was interposed for the purpose of delay and is sham and frivolous,

Final Judgment

ORDERED that the separate defense contained in the answer herein be and the same hereby is stricken out as sham, and that the plaintiff have judgment upon the remainder of the said answer and upon the whole thereof as frivolous, for the relief demanded in the complaint with (\$10) costs of this motion.

Enter,

(L. A. G.,)

J. S. C.

FORM No. 109

Final Judgment Upon Order Striking Out Sham Defense

SUPREME COURT,
(New York) County.

(CHARLES SIMMS,)

Plaintiff,

against

(EMIL MEYER,)

Defendant.

The defendant having been served with summons and complaint in this action, and having duly appeared by his attorneys, (*Wood & Hill*), Esqs., and served an answer herein, and the plaintiff having moved for judgment upon the answer at Special Term,

And the Court having heard the said motion and having made an order thereon dated and entered on (10th) day of (*August*, 1916), striking out the separate defense set up in the said answer as sham and awarding judgment to the plaintiff upon the remainder of said answer and upon the whole thereof, as provided for the relief demanded in the complaint, including (\$10) costs of said motion, and the costs of this action having been taxed by the Clerk of the Court at the sum of (\$29.16),

NOW, on motion of (*Williams & Hayes*), attorneys for plaintiff, it is adjudged and decreed that the defendant's answer be, and the same hereby is, adjudged frivolous and that the plaintiff,

Final Judgment

(*Charles Simms*), do recover of the defendant, (*Emil Meyer*). upon the cause of action set forth in the complaint, the sum of (\$500) damages, together with (\$77.50) interest thereon from (*March 1, 1914,*) and (\$29.16) his costs as taxed, making in all the sum of (\$606.66).

And that he have execution therefor.

Dated, (*New York, September 25, 1916.*)

(*WILLIAM F. SCHNEIDER,*)

Clerk.

 Notice of Motion

On a motion to overrule a frivolous pleading affidavits cannot be used to support the attacked pleading. The motion must be determined solely by an inspection of the pleadings. (*Platt v. Hepworth*, 13 *Civ. Pro. Rep.* 122; *Dancel v. Goodyear*, 67 *App. Div.* 498.)

As to form of the order, see *Ellwood v. Roof*, 82 *N. Y.* 428.

 FORM No. 110

Notice of Motion to Overrule Frivolous Answer and Grant Judgment

SUPREME COURT,
(*New York*) County.

(HARRY BURKE,)	} Plaintiff,
against	
(IRVING LANE,)	
Defendant.	

Sir:

PLEASE TAKE NOTICE, that upon the complaint herein and the answer thereto of the defendant, (*Irving Lane*), the undersigned will apply to this court at a Special Term, Part (I) thereof, to be held at the County Court House, (*Borough of Manhattan, City of New York*), on the (27th) day of (*December, 1915*), at (10:30) o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order overruling the answer of the defendant, (*Irving Lane*), herein as frivolous and for judgment thereon, and for such other and further relief in the premises as to the court may seem just, together with the costs of this motion.

Dated, (*New York, December 21, 1915.*)

Yours, etc.,

(*MARTIN STONE,*)

Attorney for Plaintiff,

Office & P. O. Address,

(*141 Broadway,*)

To (*SPENCER & JONES;*)

(*Borough of Manhattan,*)

Attorneys for Defendant,

(*New York City.*)

(*14 Wall Street,*)

(*New York City.*)

Order

FORM No. 111

Order Overruling Frivolous Answer and Granting Judgment

At a Special Term, (*Part I*), of the Supreme Court of the State of New York, held in and for the County of (*New York*), at the County Court House, (*Borough of Manhattan, City of New York*), on the (*27th*) day of (*December, 1915*).

PRESENT:

Hon. (*LEONARD A. GIEGERICH*),

Justice.

(<i>HARRY BURKE</i>),

Plaintiff,

against

(<i>IRVING LANE</i>),

Defendant.

The plaintiff having moved this court for judgment on the ground that the answer of the defendant, (*Irving Lane*), to the complaint herein is frivolous, and said motion coming regularly on to be heard,

NOW, on reading and filing the notice of said motion, dated the (*21st*) day of (*December, 1915*), the complaint herein and the answer of the said defendant, (*Irving Lane*), in support of said motion and after hearing (*Martin Stone*), of counsel for the plaintiff in support of said motion and (*John Spencer*) of counsel for the defendant in opposition thereto, and it appearing to the satisfaction of the court that the answer of the defendant, (*Irving Lane*), is frivolous and that judgment for plaintiff as against said defendant, (*Irving Lane*), should be had therein, and due deliberation being had thereon,

NOW, on motion of (*Martin Stone*), attorney for the plaintiff, it is

ORDERED AND ADJUDGED that the answer of the defendant, (*Irving Lane*), be and the same is hereby overruled as

 Notice of Motion

frivolous and that plaintiff have judgment as against the defendant, (*Irving Lane*), for the relief demanded in the complaint, with the costs of this action, and \$10 costs of this motion.

Enter:

(*L. A. G.*,)

J. S. C.

FORM No. 112

Notice of Motion to Strike Out Redundant Matter in Pleading

SUPREME COURT,
(*New York*) County.

(<i>EDWARD TINKER</i> ,) Plaintiff, against (<i>EVENING STAR PUBLISHING COMPANY</i> ,) Defendant.

Sir:

TAKE NOTICE that on the pleadings herein and the annexed affidavit of (*Paul Lawrence*), verified the (6th) day of (*November*, 1916), the undersigned will move this court at a Special Term, (*Part I*), thereof, to be held in and for the County of (*New York*), at the County Court House, in the (*Borough of Manhattan, City of New York*,) on the (11th) day of (*November*, 1916), at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order striking out from the

Affidavit on Motion

defendant's (*amended*) answer to the complaint the following portion thereof as redundant and irrelevant, to wit:

(*Paragraph I., the whole thereof.*)

(*Paragraph V., the following allegation, viz. (quote):*

Together with the costs of this motion.

Dated (*New York, November 6th, 1916.*)

Yours, etc.,

(*PAUL LAWRENCE,*)

Attorney for Plaintiff,

(*31 Nassau Street,*)

(*Borough of Manhattan,*)

(*New York City.*)

To (*Clarence Jones,*)

Attorney for Defendant,

(*35 Broadway,*)

(*New York City.*)

FORM No. 113

Affidavit on Motion to Strike Out Redundant Matter in Pleading

SUPREME COURT,

(*New York*) County.

(*EDWARD TINKER,*)

Plaintiff,

against

(*EVENING STAR PUBLISHING
COMPANY,*)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*Paul Lawrence,*) being duly sworn, deposes and says: That he is the attorney for the plaintiff herein.

That this action was commenced on the (*14th*) day of (*July, 1916,*) by the service of the summons and complaint, and that the time for the defendant to answer was extended by an order twenty

Order

days from the (3d) day of (*August*, 1916). That said answer was served on the (14th) day of (*August*, 1916).

That by order the time to serve an amended answer was extended twenty days from the (5th) day of (*October*, 1916,) and on the (25th) day of (*October*, 1916,) said amended answer was served.

That no previous application has been made for this order.

(*PAUL LAWRENCE*.)

Sworn to before me, this }
(6th) day of (*November*, 1916.) }

(*H. B. BRADLEY*.)

Notary Public,
(*Kings*) County.

Certificate filed in (*New York*) County.

FORM No. 114

Order Striking Out Matter as Redundant and Irrelevant

At a Special Term of the Supreme Court, (*Part I*.) held
in and for the County of (*New York*.) at the County
Court House, in the (*Borough of Manhattan, City*
of New York.) on the (3d) day of (*December*, 1916.)

PRESENT:

Hon. (*JOHN FORD*.)
Justice.

(<i>EDWARD TINKER</i> .)	}
Plaintiff,	
against	
(<i>EVENING STAR PUBLISHING</i> <i>COMPANY</i> .)	
Defendant.	

A motion having been made by plaintiff for an order to strike out paragraphs (*I. and V.*), of defendants (*amended*) answer herein, on the ground that the allegations therein contained are irrelevant and redundant, and said motion having duly come

Answer — Notice of Motion

on to be heard; upon reading and filing the notice of motion and affidavit of (*Paul Lawrence*,) verified (*November 6th*, 1916,) and the pleadings herein filed in support of said motion; and after hearing (*Paul Lawrence*,) Esq., counsel for (*plaintiff*,) in support of the motion, and (*Clarence Jones*), Esq., counsel for the (*defendant*,) in opposition thereto, and due deliberation having been had thereon;

NOW, on motion of (*Paul Lawrence*,) attorney for the (*plaintiff*,) it is

ORDERED, that paragraph (*I.*) and paragraph (*V.*) (*in so far as it reiterates the allegations in paragraph (I.,) with the exception of the denial that the publication was malicious,*) be and the same hereby are stricken from said (*amended*) answer, and that within (*ten*) days after the service of a copy of this order on defendant's attorney, defendant serve its amended answer in conformity with this order.

Enter,
(*J. F.*)
(*J. S. C.*)

FORM No. 115

Notice of Motion to Make Answer More Definite and Certain and
to Strike Out

SUPREME COURT,
(*New York*) County.

(<i>JAMES JERONS</i> ,)	}
Plaintiff,	
against	
(<i>NEW YORK INSURANCE COM- PANY</i> ,)	}
Defendant.	

Sirs:

PLEASE TAKE NOTICE that upon the (*amended*) complaint and (*amended*) answer in the above-entitled action, and on all the proceedings heretofore had herein, the undersigned will move this court at a Special Term, (*Part I. thereof*,) to be

Answer — Notice of Motion

held at the County Court House in the (*Borough of Manhattan, City of New York,*) on the (*26th*) day of (*February, 1916,*) at (*10:30*) o'clock A. M., or as soon thereafter as counsel can be heard, for an order herein requiring the defendant to make more definite and certain the allegations constituting the so-called ("*second, further and separate defense,*") in the defendant's (*amended*) answer to the (*amended*) complaint herein, by striking therefrom the allegations contained in the paragraph in said (*amended*) answer numbered (*III.*); and for such other and further relief as to the court shall seem just and proper in the premises.

Dated, (*New York, February 20, 1916.*)

Yours, etc.,

(*CARR & ROOME,*)

Attorneys for Plaintiff,

Office and Post Office Address,

(*59 Wall street,*)

(*Borough of Manhattan,*)

(*New York City.*)

To

(*JAMES HOOD,*)

Attorney for Defendant,

(*46 Broadway,*)

(*Borough of Manhattan,*)

(*New York City.*)

Answer — Order

FORM No. 116

Order Directing Answer to be Made More Definite and Certain and Striking Out

At a Special Term (*Part I*), of the Supreme Court, held in and for the County of (*New York*) at the County Court House, in the (*Borough of Manhattan, City of New York*), on the (*11th*) day of (*March, 1916*.)

PRESENT:

Hon. (*SAMUEL GREENBAUM*),

Justice.

(<i>JAMES JERONS</i>),

Plaintiff,

against

(<i>NEW YORK INSURANCE COMPANY</i>),
--

Defendant.

Plaintiff having moved this court for an order herein requiring the defendant to make more definite and certain the allegations constituting the so-called ("*Second, Further and Separate Defense*") in the defendant's (*amended*) answer to the (*amended*) complaint herein by striking out therefrom the allegations contained in the paragraph to said (*amended*) answer numbered (*III*), and for such other and further relief as to the court might seem just and proper, and the said motion having duly come on to be heard,

And upon reading said (*amended*) complaint herein, verified the (*7th*) day of (*December, 1915*), and the said (*amended*) answer herein verified the (*18th*) day of (*February, 1916*), and upon reading and filing plaintiff's notice of said motion dated the (*20th*) day of (*February, 1916*), read in support of the motion;

And after hearing (*Samuel Roome*), Esq., in support of the motion, and (*James Hood*), Esq., in opposition thereto, and due deliberation having been had,

Complaint — Notice of Motion

NOW, on motion of (*Carr & Rbome*,) Esqs., attorneys for the plaintiff, it is

ORDERED that the said motion be and the same hereby is granted; and it is further

ORDERED that the defendant make more definite and certain the allegations constituting the so-called ("*Second, Further and Separate Defense*") in its (*amended*) answer to the (*amended*) complaint herein by striking out therefrom the allegations contained in the paragraph of said amended answer numbered (*III*); and it is further

ORDERED that the defendant have leave to serve an answer to the (*amended*) complaint herein, amended in conformity herewith within (*ten* (10)) days after the service of a copy of this order, with notice of entry thereof, upon the defendant's attorneys.

Enter,

(*S. G.*,)

J. S. C.

FORM No. 117

Notice of Motion to Make Complaint More Definite and Certain

SUPREME COURT,
(*New York*) County.

(*AMERICAN LIFE INSURANCE
COMPANY*,)

Plaintiff,

against

(*JAMES DOBSON*,)

Defendant.

Sir:

YOU WILL PLEASE TAKE NOTICE that on the complaint in the above-entitled action and the affidavit of (*Charles Arnold*,) verified the (*26th*) day of (*September*, 1916,) hereto annexed, a motion will be made by the defendant at a Special Term of this Court, at (*Part I*) thereof, to be held at the County Court House in the (*Borough of Manhattan, City of New York*,) on the (*2d*)

Complaint — Notice of Motion

day of (*October, 1916,*) at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order striking out as irrelevant and redundant certain matters hereinafter specified, contained in said complaint, and requiring that said complaint be made definite and certain by amendment in the particulars hereinafter specified, and requiring that the statement of the facts constituting the several causes of action therein alleged be separately numbered, that is to say:

I. That the complaint be made more definite and certain by amendment, so that it shall describe with common certainty (*each of the payments, etc.,*) * * * and further, so that it shall appear from the complaint with common certainty (*which of the alternative allegations contained in said first and second causes of actions, etc.,*)

And further, so that it shall appear from the complaint with common certainty, whether the said first and second causes of action are for * * * *

That the statement of the facts constituting each such cause of action, upon which it is sought to hold the defendant responsible, be separated and numbered.

II. That the matter contained in paragraphs (36 and 38) of the complaint be stricken out as irrelevant and redundant.

And you will please further take notice that the defendant will then and there move for an extension of time to answer the complaint herein after the determination of this motion and the entry and service of an order thereon.

And you will please further take notice that the defendant will then and there move for such other and further relief in the premises as to the court may seem just and proper, and for the costs of said motion.

Dated, (*New York, September 23, 1916.*)

Yours, etc.,
(*COURTLAND VANDINE,*)

Attorney for Defendant,
Office and P. O. Address,
(*31 Liberty Street,*)
(*Borough of Manhattan,*)
(*New York City.*)

To (*Paul Allen,*)

Attorney for Plaintiff.

Order to Show Cause

FORM No. 118

Order to Show Cause Why Matter Should Not Be Stricken Out as Irrelevant

SUPREME COURT,
(*New York*) County.

(<i>RICHARD WILSON</i> ,)	}
Plaintiff,	
against	
(<i>ROBERT GRANT AND OTHERS</i> ,)	}
Defendants.	

On the summons and complaint herein, and on the annexed affidavit of (*Robert Grant*,) duly verified (*February 5, 1916*), and on all the proceedings herein, it is

ORDERED, that the plaintiff or his attorney show cause at a Special Term of this court, to be held at (*Part I thereof*), at the County Court House in the County of (*New York*), on (*February 8, 1916*), at (10:30) o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, why paragraphs ("8th," "9th," "10th" and "11th") and the following allegation in paragraph ("12th"):

(*"And was also being pressed for an accounting as executor and trustee of his father's estate as aforesaid."*)

of the (*complaint*) herein should not be stricken out as irrelevant, pursuant to the provisions of section 545 of the Code of Civil Procedure; why the time of the defendant (*Robert Grant*) to plead to the complaint herein, shall not be extended until (*five*) days after the hearing and determination of this motion, and the entry of the order thereupon; and why the defendant (*Robert Grant*) should not have such other and further relief in the premises as to this court shall seem just and proper, including the costs of this motion; and special and sufficient reasons appearing therefor, it is

FURTHER ORDERED, that service of this order and of the said affidavit of (*Robert Grant*,) duly verified (*February 5,*

Order to Show Cause

1916,) on the plaintiff's attorneys on or before (*February 6, 1916,*) shall be due and sufficient service thereof.

Dated, (*New York, February 6, 1916.*)

(*SAMUEL GREENBAUM,*)

Justice of the Supreme Court of the State of New York.

Affidavit on Motion

This affidavit should show the condition of the cause and when defendant's time to answer will expire.

FORM No. 119

Affidavit on Motion to Strike Out Irrelevant Matter

SUPREME COURT,
(*New York*) County.

(RICHARD WILSON),	}
Plaintiff,	
vs.	
(ROBERT GRANT) and OTHERS,	
Defendants.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*Robert Grant*), being duly sworn, says: I am one of the defendants in the above-entitled action and reside at (*202 West 12th Street in the City and County of New York*).

This action was commenced to (*set aside certain conveyances made by me to the defendant Rebecca Grant as fraudulent as against my creditors for an accounting and for an injunction with respect to the real estate transferred*) and for other relief.

The summons and complaint in this action were personally served on me on (*December 28, 1915*), and on the defendant (*Rebecca Grant*) on (*January 2, 1916*).

I duly appeared herein by (*Lyman A. Bolton*), my attorney, on (*December 31, 1915*), and the defendant (*Rebecca Grant*) duly appeared herein by (*Robert Emerson*), her attorney, on (*January 19, 1916*).

A notice of pendency of this action was filed in the office of the clerk of the County of (*New York*) on (*December 26, 1915*). My answer has not been served as yet; neither has the answer of the defendant, (*Rebecca Grant*). My time to answer, demur or move in relation to the complaint herein, has been extended by stipulation to and including (*February 11, 1916*). The time of the defendant (*Rebecca Grant*) to answer, demur or move in relation to the complaint herein has been extended by stipulation to and including (*February 11, 1916*).

Affidavit on Motion

I have fully and fairly stated the case herein to (*Lyman A. Bolton*), my counsel herein, who has an office at (*No. 2 Rector Street, in the Borough of Manhattan, City of New York*), and after making such statement as aforesaid, I am advised by my said counsel, and verily believe, that I have a good and substantial defense upon the merits to the cause of action alleged in the plaintiff's complaint, or to some part thereof, and intend to defend this action in good faith.

I am advised by my said counsel that the matters alleged in paragraphs (*8th, 9th, 10th and 11th and the following allegation in paragraph 12, "and was also being pressed for an accounting as executor and trustee of his father's estate as aforesaid,"*) are redundant and irrelevant and tend to confuse the issue herein and render the complaint unduly voluminous, in that (*the allegations referred to apparently state a separate and distinct cause of action involving parties other than myself who are not made parties to this action*); that they are not germane to the issue and evidence thereunder will not be admissible upon the trial, and that I will be greatly prejudiced by the allegations if the same are permitted to remain in the complaint in that (*I cannot properly protect my rights in the premises in disproving said allegation in an action wherein the aforesaid persons are not parties.*)

I, therefore, respectfully pray this court for an order striking out paragraphs (*"8th," "9th," "10th" and "11th" and the following allegation in paragraph 12th: "and was also being pressed for an accounting as executor and trustee of his father's estate as aforesaid."*) of the complaint herein, as irrelevant, pursuant to the provisions of section 545 of the Code of Civil Procedure.

An order to show cause why such relief shall not be granted, returnable in less than eight and in less than five days, is necessary for the reason that, unless an order to show cause be granted, this motion cannot be heard and determined prior to the expiration of my time to plead to the complaint herein and I am advised by my said counsel, and verily believe, that it will be necessary to have such motion heard and determined before I can properly plead to the complaint herein.

No extension of time to answer, demur or otherwise move in relation to the complaint herein has been granted, by stipulation or order except as hereinbefore stated.

Order

No previous application for the annexed order to show cause has been made to this court, or to any justice thereof.

(*ROBERT GRANT.*)

Sworn to before me, this }
(5th) day of (*February*, 1916). }

(*R. F. HODGE,*)

Notary Public,
(*New York*) County.

FORM No. 120
Order Striking Out Allegations as Irrelevant

At a Special Term (*Part I*) of the Supreme Court held in and for the county of (*New York*) at the County Court House in the (*Borough of Manhattan, City of New York,*) on (*March 7, 1916.*)

PRESENT:

Hon. (*SAMUEL GREENBAUM,*)
Justice.

(<i>RICHARD WILSON,</i>) Plaintiff, vs. (<i>ROBERT GRANT</i>) and OTHERS, Defendants.	}
--	---

A motion on behalf of the defendant, (*Robert Grant,*) striking out as irrelevant, paragraphs ("*eighth,*" "*ninth,*" "*tenth,*" and "*eleventh*") and the following allegation of paragraph ("*twelfth,*" "*and was also being pressed for an accounting as executor and trustee of his father's estate as aforesaid*") of the complaint herein, pursuant to the provisions of section 545 of the Code of Civil Procedure, and to extend the time of the defendant (*Robert Grant*) to plead to the complaint herein until (*five*) days after the hearing and determination of the motion and the entry of an order thereupon, coming on regularly to be heard upon an order to show cause,

Order

NOW, upon reading and filing the said order to show cause, which bears date (*February 6, 1916,*) together with proof of due service thereof upon the attorneys for the plaintiff, the affidavit of (*Robert Grant,*) duly verified (*February 5, 1916,*) a copy of the complaint herein, read in support of said motion, and the said motion having been duly submitted by counsel for the respective parties, and due deliberation having been had thereon, it is,

On motion of (*Lyman A. Bolton,*) Esq., the attorney for the defendant, (*Robert Grant,*)

ORDERED that the said motion be and the same hereby is granted to the extent of striking out paragraphs ("*ninth,*" "*tenth*" and "*eleventh*") of the complaint and the words "*as aforesaid*" at the conclusion of paragraph ("*twelfth*") of the complaint; and it is further

ORDERED that paragraphs ("*ninth,*" "*tenth*" and "*eleventh*") of the complaint and the words ("*as aforesaid*") at the conclusion of paragraph ("*twelfth*") be and the same hereby are stricken out as irrelevant; and it is further

ORDERED that the time of the defendant (*Robert Grant*) to plead to the complaint herein be and the same hereby is extended until (*five*) days after the entry of this order; and it is further

ORDERED that the said motion otherwise be and the same hereby is denied.

Enter

(*S. G.,*)

J. S. C.

DILATORY ANSWERS

Practitioners frequently are in doubt which of the following courses to adopt when an answer has been interposed.

(1) To apply to court for judgment on ground that answer is frivolous. (§ 537, Code.)

(2) To move to strike out answer or *défense* as sham. (§ 538, Code.)

(3) To move for judgment upon the pleadings. (§ 547, Code.)

(4) To wait until the trial and at opening thereof move before Trial Justice for judgment on the pleadings by reason of the insufficiency of the defendant's answer.

(5) To move to make answer more definite and certain.

Especially does this question arise when the defendant has interposed a denial of "any knowledge or information sufficient to form a belief," and it is quite apparent that such statement cannot in all probability be a true statement.

There are two classes of cases here to be considered:

1. Where the denials in the answer are denials of knowledge or information sufficient to form a belief with respect to matters which are unmistakably within the knowledge of the defendant who interposes such an answer. Instances of this are very rare. In this class of cases it is of no practical importance whether there is a motion before trial to strike out the answer as sham or frivolous or whether a motion is made at the trial for judgment on the pleadings because the result in either case will be the same.

2. Where this form of denial is used to meet allegations of fact, which are only presumably within the knowledge of the person making the denial or where the defect in the pleading is such that the court may, upon proper terms and conditions, permit it to be changed or amended.

In this class of cases, the proper method of testing an alleged defect of this description is for the party who attacks the pleading to make a motion to strike out the answer as sham under § 538 of the Code.

On such a motion (to strike out answer as sham) affidavits may

Disposing of

be used and the court thus gives the attacked pleader the opportunity to establish his good faith if he can and to prove that he cannot honestly go further than to deny knowledge or information.

Under this class of cases (denials presumably false) the matter will not be disposed of on,

1. Motion made under § 547, Code, or
2. Application for judgment on ground that answer is frivolous. (155 *App. Div.* 122.)
3. Motion at trial term at opening of trial.
4. Motion to make more definite and certain.

The only remedy in such cases is to move to strike out as sham, as the well settled doctrine is that when the answer, even in this form, is verified, the application will be denied. There is practically no procedure to aid the party desiring to get rid of the issue before or without the trial, provided the answer is verified and contains such a denial.

A striking example of such a presumptively frivolous denial is when a complaint claims for work, labor and services and material furnished, reasonably worth a specified sum which defendant agreed to pay; and the further allegation of nonpayment after demand. The defendant in due form denies any knowledge or information sufficient to form a belief as to each and every of the said allegations. The courts have said that it is possible, even though improbable, that the defendant really had no knowledge or information sufficient to form a belief as to the material allegation of the complaint, because, under the complaint, the plaintiff could prove his cause of action by showing that the work and materials were ordered by some agent of the defendant and could establish his allegation that the defendant agreed to pay for them by proving the order by the agent and the value, relying upon the implied promise to pay. The denials are therefore only presumptively frivolous.

Another example of presumptively frivolous denial (which at first blush seems an absolutely frivolous denial) is when the defendant denies any knowledge or information as to matters of public record. Public records not infrequently are misplaced or lost and sometimes abstracted from their proper depositories or destroyed by fire or other causes, and therefore to say that a defendant cannot under any circumstances deny knowledge or information of facts presumptive provable by a public record sufficient to form a belief, would be dangerous and unjust.

Disposing of

As to choice of remedy, see *Hyland v. Montgomery*, 88 Misc. 295; *Dahlstrom v. Gemunder*, 198 N. Y. 454; *Harly v. Plant*, 210 N. Y. 411; *Kirschbaum v. Eschman*, 205 N. Y. 134; *Thompson v. Wittkop*, 184 N. Y. 117, 170 App. Div. 61; *Cerlian v. Bacon*, 155 App. Div. 118; *Little v. Lecouwer*, 171 App. Div. 233.

See also Disposition of Demurrers, p. 416; Motions for Judgment on the pleadings, p. 431; Motions relating to pleadings, p. 376.

DEMURRERS

A demurrer on the grounds stated in either subdivisions 1, 2, 4 or 8 of § 488 of the Code is stated in the language of the Code, but if on the grounds mentioned in subdivisions 3, 5, 6 or 7, the demurrer must point out specifically the particular defect relied upon.

Before Demurring Consider Whether

1. To move to make complaint more definite or certain.
 2. To move to strike out irrelevant, redundant or scandalous matter in the complaint.
 3. To move to elect between pleas.
 4. To move to separately state causes of action.
 5. To move for security for costs.
 6. To move to transfer to United States Court.
-

In an action against a corporation on a promissory note or other evidence of debt, unless the defendant serves with his demurrer a judge's order directing that the issues presented thereby be tried, the plaintiff may, when the time to plead has expired, take judgment as upon default. (§ 1778, Code.)

Retaining the pleading, however, is a waiver. (See 3 *Brod. Pl. & Pr. Reps.* 1, and note on this subject generally.)

FORM No. 121

Ground: That the Court Has No Jurisdiction of the Person of the Defendant

SUPREME COURT,
(*New York*) County.

(WILLIAM WRIGHT,)	}
against	
(THOMAS BOOKER,)	
Defendant.	

The defendant above named by (*Theodore Coe*,) his attorney, demurs to the complaint herein upon the ground that it appears upon the face of the complaint,

 No Jurisdiction of Subject Matter

That the court has no jurisdiction of the person of the defendant.

(THEODORE COE,)

Defendant's Attorney,
Office and P. O. Address,
(15 William Street,)
(Borough of Manhattan,)
(New York City.)

FORM No. 122

Ground: That the Court Has No Jurisdiction of the Subject-matter

SUPREME COURT,
(New York) County.

(WILLIAM WRIGHT,)

Plaintiff,

against

(THOMAS BOOKER,)

Defendant.

The defendant above named by (*Theodore Coe*,) his attorney, demurs to the complaint herein upon the ground that it appears upon the face of the complaint,

That the court has no jurisdiction of the subject of this action.

(THEODORE COE,)

Defendant's Attorney,
Office and P. O. Address,
(15 William Street,)
(Borough of Manhattan,)
(New York City.)

Plaintiff Has No Legal Capacity to Sue

FORM No. 123

Ground: That the Plaintiff Has Not Legal Capacity to Sue

SUPREME COURT,
(*New York*) County.

(<i>WILLIAM WRIGHT</i> ,)	} Plaintiff,
against	
(<i>THOMAS BOOKER</i> ,)	} Defendant.

The defendant above named by (*Theodore Coe*,) his attorney, demurs to the complaint herein upon the ground that it appears upon the face of the complaint,

That the plaintiff has not legal capacity to sue in that (*add particular defect relied upon*).

(*THEODORE COE*,)

Defendant's Attorney,
Office and P. O. Address,
(*15 William Street*,)
(*Borough of Manhattan*,)
(*New York City*.)

FORM No. 124

Ground: That there is Another Cause of Action Pending Between the Same Parties for the Same Cause

SUPREME COURT,
(*New York*) County.

(<i>WILLIAM WRIGHT</i> ,)	} Plaintiff,
against	
(<i>THOMAS BOOKER</i> ,)	} Defendant.

The defendant above named by (*Theodore Coe*,) his attorney, demurs to the complaint herein upon the ground that it appears upon the face of the complaint,

Misjoinder of Parties

That there is another action pending between the same parties for the same cause.

(THEODORE COE,)

Defendant's Attorney,

Office and P. O. Address,

(15 William Street,)

(Borough of Manhattan,)

(New York City.)

FORM No. 125

Ground: That there is a Misjoinder of Parties Plaintiff .

SUPREME COURT,
(New York) County.

(WILLIAM WRIGHT)	and	(ED-
WARD EASTON,)		
		Plaintiffs,
	against	
(THOMAS BOOKER,)		
	Defendant.	

The defendant above named, by (*Theodore Coe*,) his attorney, demurs to complaint herein upon the ground that it appears upon the face of the complaint that there is a misjoinder of parties plaintiff in that it appears by the complaint that the plaintiffs are not united in interest in any demand or demands alleged in said complaint to exist against the defendants; and that it appears by said complaint that the action is brought to recover upon alleged several demands, (*one in favor of the plaintiff (William Wright) and the other in favor of the plaintiff (Edward Easton), in neither of which several demands, existing in favor of each said plaintiffs, is the plaintiff interested.*)

(THEODORE COE,)

Defendant's Attorney,

Office and P. O. Address,

(No. 15 William Street,)

(Borough of Manhattan,

City of New York.)

FORM No. 126

Ground: Defect in Parties Plaintiff or Defendant

SUPREME COURT,
(*New York*) County.

(WILLIAM WRIGHT,)	}
Plaintiff,	
against	
(THOMAS BOOKER,)	
Defendant.	

The defendant above named by (*Theodore Coe*,) his attorney, demurs to the complaint herein upon the ground that it appears upon the face of the complaint:

I. That there is a defect of parties defendant in that the persons described in paragraph 5 of the complaint as ("*Other devisees therein named*") are necessary (*defendants*) in the action and are not made parties.

II. That there is a defect of parties (*plaintiff or defendant*,) in that the persons described in paragraph 5 of the complaint as ("*Other devisees therein named*") are necessary, parties to the action, and are not made parties.

III. That there is a defect of parties (*defendant*) in that (*Charles B. Pierson, as trustee under the will of Henry Pierson, deceased*,) is a necessary (*defendant*,) and is not made a party.

IV. That there is a defect of parties (*plaintiff*) in that (*the person seized of the balance or remainder of the premises mentioned in the complaint, other than the parts alleged to be held by the plaintiff*,) are necessary parties (*plaintiff*,) and are not made parties (*plaintiff*) in the action.

V. That there is a defect of parties (*defendant*) in the omission as a party (*defendant of the person who purchased at the sale alleged in the said complaint*,)

VI. That there is a defect of parties (*defendant*) in that the

Misjoinder of Actions •

plaintiff has not made (*Robert Mack*), who is a proper and necessary party to the cause of action alleged in said complaint, a party (*defendant*) herein.

(*THEODORE COE,*)

Defendant's Attorney,
Office and P. O. Address,
(15 William Street, Borough of Manhattan,)
(New York City.)

FORM No. 127

Ground: That Several Causes of Action Have Been Improperly United

SUPREME COURT,
(New York) County.

(*WILLIAM WRIGHT,*)

Plaintiff,

against

(*THOMAS BOOKER,*)

Defendant.

The defendant above named, by (*Theodore Coe,*) his attorney, demurs to the complaint herein upon the ground that it appears upon the face of the complaint:

That several causes of action have been improperly united, one being a claim for damages because of certain injuries to the plaintiff's person, and the second a claim to recover real property and damages for withholding the same.

That it appears upon the face of the complaint that said causes of action so united are inconsistent, do not belong to any one of subdivisions 1 to 9 of § 484 of the Code of Civil Procedure, and did not arise out of the same transaction or transactions connected with the same subject of action.

(*THEODORE COE,*)

Defendant's Attorney,
Office and P. O. Address,
(15 William Street, Borough of Manhattan,)
(New York City.)

Misjoinder of Actions

FORM No. 128

Demurrer — Ground: Misjoinder of Causes of Action

SUPREME COURT,
(Kings) County.

(FRANK ROBINSON,)	}
Plaintiff,	
against	
(OLIVER BANGS and ALEXANDER JOHNSON,)	
Defendants.	

The defendant (*Alexander Johnson*), by (*Theodore Coe*), his attorney, demurs to the complaint herein upon the ground that it appears upon the face of the complaint:

That causes of action have been improperly united therein, in that the action has been brought against two persons who are not severally liable upon the same written instrument, to wit: *against the lessee named in the lease annexed to the complaint for breaches of said lease and the covenants thereof, and against the surety upon a separate instrument, viz.: a guaranty also annexed to said complaint,*) and in that it further appears upon the face of the complaint that the causes of action so united are inconsistent, do not belong to any one of subdivisions 1 to 9 of § 484 of the Code of Civil Procedure, do not affect all the parties to the action, did not arise out of the same transaction or transactions connected with the same subject of action.

(THEODORE COE,)

Attorney for Defendant (*Johnson*),
Office & Post-Office Address,
(62 Broadway, N. Y. City.)

FORM No. 129

Demurrer — Ground: Misjoinder of Causes of Action

SUPREME COURT,
(*Tompkins*) County. .

(<i>CHARLES RUDY</i> ,)	}
Plaintiff,	
against	
(<i>GEORGE MORE</i>) and (<i>LEE SMITH</i> ,)	
Defendants.	

The defendant (*George More*), by (*Theodore Coe*), his attorney, demurs to the complaint herein upon the ground that it appears upon the face of the complaint:

That causes of action have been improperly united in the complaint, in that a cause of action for (*negligence in putting upon the market a gun constructed of such defective material and in such careless manner that it was unsafe for use*) has been joined with a cause of action for (*a breach of a warranty that said gun was properly constructed of good and safe material in every part, and would shoot black or nitro powder and not become loose*), and in that a cause of action in tort is improperly united with a cause of action upon contract as above specifically stated and it appears upon the face of the complaint that said causes of action are not consistent, do not both belong to any one of subdivisions 1 to 9 inclusive of § 484, Code of Civil Procedure, and did not arise from the same transaction or transaction connected with the same subject of action, and are not connected with the same subject of action.

(*THOMPSON & COFF*,)

Attorneys for Defendant (*More*),

Office and P. O. Address,
(*Cayuga Bank Building*,)

(*Ithaca, N. Y.*)

FORM No. 130

**Ground: That the Complaint Does Not State Facts Sufficient to Con-
stitute a Cause of Action**

SUPREME COURT,
(*New York*) County.

(<i>WILLIAM WRIGHT,</i>)	}
Plaintiff,	
against	
(<i>THOMAS BOOKER,</i>)	
Defendant.	

The defendant above named, by (*Theodore Coe,*) his attorney, demurs to the complaint herein upon the ground that it appears upon the face of the complaint:

That the complaint does not state facts sufficient to constitute a cause of action.

(*THEODORE COE,*)
Defendant's Attorney,
Office and P. O. Address,
(*15 William Street, Borough of Manhattan,*)
(*New York City.*)

Several Grounds

FORM No. 131

Upon Several Grounds

SUPREME COURT,
(New York) County.

(JAMES T. ROGERS,) as administrator of the estate of (CHARLES A. SMITH,) deceased,

Plaintiff,

against

(THE NATIONAL SUPPLY COMPANY,) of the city of New York, David Mitchell, as executor of the will of Marian Joyce, deceased, and individually, William S. Lamb, Charles N. Bedell, and Jean L. Burnett, co-partners as Lamb, Bedell & Burnett, and James F. Smith, as surviving partner of the firm of Joyce and Smith, and individually,

Defendants.

The defendant, (the National Supply Company of the City of New York,) by (Baker, Milton & Burns,) its attorneys, demurs to the complaint herein upon the following grounds:

I

FOR A FIRST GROUND OF DEMURRER

That it appears upon the face of the complaint that the plaintiff has not legal capacity to sue because:

A. The cause of action against this defendant is founded upon the contract annexed to the complaint, which was made between the defendant, David Mitchell, as executor of the last will and testament of Marian Joyce, deceased, and the defendant, James F. Smith, surviving partner of Joyce and Smith, as parties of the first part, with this defendant, the National Supply Company of the city of New York, party of the second part, on or about July 12, 1915, at a time when the plaintiff's testator was dead, nor was

Several Grounds

the said Charles A. Smith, deceased, nor the plaintiff herein a party to said contract.

B. The action is founded upon the said contract annexed to the complaint, which was made after the dissolution of said firm of Joyce and Smith, by reason of the death of the said Marian Joyce, and by reason of the death of the said Charles A. Smith. The contract was made by the said James F. Smith, sole surviving partner of said firm, in the process of the collection of the assets of said firm, and was not a contract in which said firm as such was interested, nor was the said Charles A. Smith, deceased, interested in said contract during his lifetime or during the existence of said firm, and neither he nor the plaintiff, as his administrator, has any interest therein, nor has the plaintiff as such administrator any capacity to sue thereon as against this defendant.

C. If it be assumed that the cause of action is founded upon a contract or firm obligation of said firm of Joyce and Smith, that then the plaintiff, as administrator of said Charles A. Smith, deceased, a deceased partner, has no capacity to sue this defendant thereon, but that this suit can only be brought, if at all, by the surviving partner, James F. Smith, and it appears upon the face of the complaint that said surviving partner has brought a suit for similar relief, and that said suit has been settled by the giving of a release, as is alleged in the complaint, and it does not appear that said release has been set aside or canceled.

II

FOR A SECOND GROUND OF DEMURRER

That it appears upon the face of the complaint that there is a defect of parties plaintiff.

A. If said suit is brought upon the contract annexed to the complaint, the parties of the first part to said contract, to wit, the said James F. Smith, as surviving partner, and the said David Mitchell, as executor of Marian Joyce, should be added as plaintiffs, and it does not appear why the said David Mitchell, as such executor, is made a party defendant herein, instead of being joined as a party plaintiff.

B. If said action is founded upon a partnership obligation of said firm of Joyce and Smith, it appears that the surviving partner of said firm, the said James F. Smith, should be added as a party plaintiff herein.

Several Grounds

III

FOR A THIRD GROUND OF DEMURRER

That it appears upon the face of the complaint that causes of action have been improperly united, for the reason that

A. A suit by the present plaintiff, as administrator of a deceased partner, for an accounting of partnership matters as against the surviving partner, James F. Smith, and as against David Mitchell, the executor of Marian Joyce, another deceased partner, is joined with,—

B. A suit against this defendant, *The National Supply Company*, and against the defendant, Charles N. Bedell, which suit is based upon the contract annexed to the complaint, which contract was made by said surviving partner after the dissolution of said firm, and which contract relates to the collection of the assets thereof, and which contract was made after the death of the said Charles A. Smith, deceased.

IV

FOR A FOURTH GROUND OF DEMURRER

That it appears upon the face of the complaint that the complaint does not state facts sufficient to constitute a cause of action.

(BAKER, MILTON & BURNS,)

Attorneys for Defendant,
Office and P. O. Address,
(*National Supply Company of
the City of New York,*)
(*27 William Street,*)
(*New York City.*)

Demurrers to Defenses and Counterclaims

When the answer demands affirmative relief the form of demurrer must follow § 495 of the Code; where no affirmative relief is demanded, the form of demurrer is under § 494 of the Code, on the ground of insufficiency in law. (1 *App. Div.* 222, 128 *N. Y.* 45, 49.)

The two following forms, Nos. 141 and 142 are to be used to demur to either new matter by way of defense or a counterclaim where no affirmative relief is demanded.

Insufficient in Law

FORM No. 132**Demurrer to Several Defenses — No Affirmative Relief Demanded**

SUPREME COURT,
(*New York*) County.

(*JOHN JONES*,)
Plaintiff,

vs.

(*WILLIAM SMITH*,)
Defendant.

The plaintiff separately demurs to each of the several affirmative defenses contained in the answer of the defendant herein and numbered respectively (*first, second and third*,) upon the ground that each of same is insufficient in law upon the face thereof.

(*WILLIAM ARNOLD*,)

Attorney for Plaintiff,
Office and Post-Office Address,
(*149 Broadway*,)
(*New York City*.)

FORM No. 133**Demurrer to Defense and Counterclaim — No Affirmative Relief Demanded**

SUPREME COURT,
(*New York*) County.

(*JOHN JONES*,)
Plaintiff,

vs.

(*WILLIAM SMITH*,)
Defendant.

The plaintiff demurs to the first and second separate defenses and to the counterclaim contained in the answer of the defendant

 Several Grounds

upon the ground that each of them is insufficient in law upon the face thereof, and that the facts stated therein do not constitute a defense or a counterclaim herein.

(*WILLIAM ARNOLD,*)

Attorney for Plaintiff,
Office and Post Office Address,
(149 Broadway,)
(New York City.)

FORM No. 134

Demurrer to Counterclaim — Grounds: 1. Lack of Jurisdiction.
2. Another Action Pending. 3. Not of Character Specified in
Section 501, Code

SUPREME COURT,
(New York) County.

(*HOWARD BATES,*)

Plaintiff,

vs.

(*MANNING E. CAMPBELL,*)

Defendant.

Plaintiff demurs to the counterclaim set forth in the answer herein for the reason that it appears on the face thereof:

I. That the court has not jurisdiction of the subject thereof.

II. That there is another action pending between plaintiff and defendant for the same cause of action therein set forth.

III. That the counterclaim is not of the character specified in § 501 of the Code of Civil Procedure.

(*WILLIAM ARNOLD,*)

Attorney for Plaintiff,
Office and Post-Office Address,
Attorney for Plaintiff,
(New York City.)

Lack of Legal Capacity to Recover

FORM No. 135

Demurrer to Counterclaim — Ground: Lack of Legal Capacity to
Recover on Same

SUPREME COURT,
(*New York*) County.

(<i>RUFUS B. WALKER,</i>)	}
vs. Plaintiff,	
(<i>EBEN PARKER,</i>)	
Defendant.	

The plaintiff demurs to the (*first*) alleged counterclaim contained in the answer herein on the ground that it appears upon the face of said counterclaim that defendant has not legal capacity to recover on the same, in that (*here specify grounds*).

(*WILLIAM ARNOLD,*)

Attorney for Plaintiff,
Office and Post-Office Address,
(*149 Broadway,*)
(*New York City.*)

FORM No. 136

Demurrer to Reply

SUPREME COURT,
(*New York*) County.

(<i>WALTER J. SARGENT,</i>)	}
against Plaintiff,	
(<i>JOHN MEREDITH ELLIS,</i>)	
Defendant.	

The defendant demurs to the reply herein (*or, to the first defense contained in the reply herein*) on the ground that it is insufficient in law upon the face thereof.

(*WILLIAM ARNOLD,*)

Attorney for Defendant,
Office and Post-Office address,
(*149 Broadway,*)
(*New York City.*)

DISPOSITION OF DEMURRERS

There are four methods of disposing of the issue of law raised by the interposition of a demurrer:

First: It may be brought on *for trial* as an issue of law by the service of notice of trial. On the determination of the issue, a "decision" of the court in writing must be filed which shall contain only conclusions of law and must direct interlocutory or final judgment to be entered thereupon. If leave is given to plead anew or amend, an interlocutory judgment should be directed, and, if no other issue remains to be tried, should also direct final judgment, if the unsuccessful party fails to comply with any of the terms of the interlocutory judgment.*

Second: Such issue of law may be brought on and tried, or disposed of, at any term of court as a contested motion under § 976 of the Code. If this method is pursued, a notice of motion and not a notice of trial is served.† Unlike the practice prevailing under the third method (*viz.*, motion for judgment under § 547 of the Code) if party moves under § 976 of the Code and is defeated, his opponent may have judgment without a second motion by either party or without bringing the issues of law on for trial. (70 *Misc.* 126.) Where the matter is so brought on no written decision or interlocutory judgment need be filed or entered, but an order should be entered. (171 *App. Div.* 295.)

Third: A motion may be made for judgment on the pleadings under § 547 of the Code, which must be brought on by notice of motion, and no notice of trial is served.‡ (203 *N. Y.* 556.)

* Where this method (1) is pursued, on the determination of the issue, if the demurrer be sustained or overruled and leave given to amend or to withdraw the demurrer and plead over, and the privilege is availed of, costs after notice of trial and the trial fee of an issue of law are properly imposed. But if final judgment is directed, or if final judgment is entered because the privilege of amending or pleading over is not accepted, then costs before and after notice of trial and the trial fee of an issue of law are taxable. (As to amount of costs, see p. 661.) (171 *App. Div.* 294.)

† On the determination of the motion, if the demurrer is sustained and leave to amend, or overruled, and leave given to withdraw the demurrer and plead over, only ten dollars motion costs are allowed. If final judgment is entered, costs before notice of trial and the motion costs are taxable. (171 *App. Div.* 295.)

‡ If this method (3) is pursued, the court, on determining the motion, if leave to amend or to withdraw the demurrer and plead over be given, has power to impose such terms as may be just. Costs, however, cannot exceed those before notice of trial and ten dollars motion costs. (171 *App. Div.* 295.)

Choice of Methods

Where the matter is so brought on, no written decision or interlocutory judgment need be filed or entered, but an order should be entered. (171 *App. Div.* 295.)

The most common practice is to proceed under the third method, viz., a motion for judgment on the pleadings, under § 547 of the Code. (See Forms, pp. 432 *et seq.*)

If such a motion is made and the moving party succeeds, he can obtain full relief, but in case he is defeated and there is no counter motion by his opponent, the motion is simply denied, and the opposing party cannot obtain judgment. This must await the disposition of the issue of law, either by a second motion made by the party who was successful on the first motion, or by the bringing on of the issue of law by notice of trial in the old way. (138 *App. Div.* 274, *Duff v. Queensboro H. L. Co.*, 156 *App. Div.* 913, 163 *App. Div.* 940, 157 *App. Div.* 894, 170 *App. Div.* 322.)

In some parts of the State a motion under § 547 of the Code and for the trial of the issue of law have been brought on at the same time, under such practice the Appellate Division has affirmed an order denying the motion and granting judgment sustaining the demurrer. (153 *App. Div.* 302.)

Of course, this practice could not prevail in New York County because these two applications for relief would be made at different parts of the court and at different times.

It is most unfortunate that the Appellate Division (138 *App. Div.* 274) limited the intended effect of § 547 by denying the non-moving party the benefit of what is necessarily decided on the disposition of the motion. If the demurrer is not good the complaint must be, and *vice versa*, and the court in deciding the motion for judgment on the pleadings should be able to put in concrete form the logical effect of the decision. See excellent article on this subject in "*Bench and Bar*," March, 1916.

Where a motion is made and denied on the disposition of the issue of law as above indicated, the judge to whom the second application for judgment is made must follow his brother judge, even though he may personally entertain a different view. (70 *Misc.* 126.)

This defect will probably be remedied by an amendment of the Code by the Legislature in 1917. (See 70 *Misc.* 126, and 67 *Misc.* 582.)

Choice of Methods

Fourth: Motion for judgment on ground that demurrer is frivolous. (Code, § 537.*) It is difficult to see what useful purpose is served by moving under this section since the enactment in 1908 of amendment to § 547 of the Code. (*Posner v. Rosenberg*, 149 App. Div. 272.)

(See also Notes on Dilatory Answers, p. 398; Motions for Judgment on the pleadings, p. 431; Motions relating to pleadings, p. 376.)

* Costs, if this method is followed, may be ten dollars motion costs.

ANSWERS

“It is a serious offense for an attorney to interpose an answer in an action which is false and which he had at least reason to believe was not true or solely to gain time, and for such attorney will be convicted of professional misconduct.” (170 *App. Div.* 543.)

Before Answering Consider Whether

1. To serve demand for change of venue.
2. To move to make complaint more definite and certain.
3. To move to strike out irrelevant, redundant or scandalous matter in the complaint.
4. To move to separately state causes of action.
5. To move to elect between pleas.
6. To move for security for costs.
7. To move to transfer to United States Court.
8. The answer should be served on co-defendants as provided by § 521, Code.

FORM No. 137

General Denial

SUPREME COURT,
(*New York*) County.

(<i>WILLIAM THOMPSON,</i>)	}
Plaintiff,	
against	
(<i>FREDERICK SMITH,</i>)	
Defendant.	

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint of the plaintiff herein,

Denies each and every allegation in said complaint contained.

 Denial — Information and Belief

WHEREFORE, the defendant demands judgment that the complaint of the plaintiff herein be dismissed, with the costs and disbursements of this action.

(EZRA WILLIAMS,)

Attorney for Defendant,
Office and Post Office Address,
(No. 15 William Street,) (New York City.)

(Verification.)

FORM No. 138

Denial Upon Information and Belief

SUPREME COURT,
(New York) County.

(WILLIAM THOMPSON,)	} Plaintiff,
against	
(FREDERICK SMITH,)	
Defendant.	

The defendant above named, by his attorney (*Ezra Williams*), answering the complaint of the plaintiff herein,

Upon information and belief, denies each and every allegation in said complaint contained.

WHEREFORE, the defendant demands judgment that the complaint herein be dismissed, with the costs and disbursements of this action.

(EZRA WILLIAMS,)

Attorney for Defendant,
Office and Post Office Address,
(No. 15 William Street,) (New York City.)

(Verification.)

Denial of Knowledge or Information

Denial of any knowledge or information sufficient to form a belief is sometimes dangerous. (*Dahlstrom v. Gemunder*, 198 N. Y. 449; *Kirchbaum v. Eschman*, 205 N. Y. 132; *Harly v. Plant*, 210 N. Y. 411; *Cerlian v. Bacon*, 155 App. Div. 118.)

FORM No. 139

Denial of Any Knowledge or Information Sufficient to Form a Belief

SUPREME COURT,
(*New York*) County.

(<i>WILLIAM THOMPSON</i> ,)	}
Plaintiff,	
against	
(<i>FREDERICK SMITH</i> ,)	
Defendant.	

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint of the plaintiff herein,

1. Denies any knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of said complaint numbered 1, 2, and 3.

2. He admits that notice was served upon this defendant by the plaintiff herein, but denies any knowledge or information sufficient to form a belief as to any other of the allegations contained in paragraph of said complaint numbered 4.

WHEREFORE, the defendant demands judgment that the complaint herein be dismissed, with the costs and disbursements of this action.

(*EZRA WILLIAMS*,)
Attorney for Defendant,
Office and Post Office Address,
(*No. 15 William Street*,)
(*New York City*.)

(Verification.)

Mixed Denials and Admissions

FORM No. 140

Mixed Denials and Admissions

SUPREME COURT,
(*New York*) County.

(*WILLIAM THOMPSON,*
Plaintiff,
against
FREDERICK SMITH,
Defendant.

The defendant above named, by (*Ezra Williams*), his attorney,
answering the complaint of the plaintiff herein,

1. Denies the allegations contained in paragraph of said complaint numbered No. 1.

2. On information and belief denies the allegations contained in paragraph of said complaint numbered 2.

3. Denies any knowledge or information sufficient to form a belief as to the allegations contained in paragraph of said complaint numbered 4.

4. Admits the allegations contained in paragraph 5 of said complaint, that notice was served upon this defendant by plaintiff herein, but denies each and every other allegation in said paragraph contained.

5. Admits the allegations contained in paragraph 6 of said complaint.

6. He denies that at (No. 621 Fifth avenue, Borough of Manhattan, City of New York), or at any other place, and on the (3rd) day of (October, 1913), or at any other time, this defendant made the promises set forth in the complaint.

7. Denies each and every allegation in said complaint contained, nor hereinbefore specifically admitted or controverted.

WHEREFORE, the defendant demands judgment that the complaint herein be dismissed, with costs and disbursements of this action.

(EZRA WILLIAMS,)
Attorney for Defendant,
Office and Post Office Address,
(No. 15 William Street,)
(New York City.)

(Verification.)

Pleading Payment

FORM No. 141

Alleging Payment

SUPREME COURT,
(*New York*) County.

(<i>WILLIAM THOMPSON</i>),	}
Plaintiff,	
against	
(<i>FREDERICK SMITH</i>),	
Defendant.	

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint of the plaintiff herein, alleges:

That before the commencement of this action, and on or about the (10th) day of (*March*, 1916), the defendant satisfied and discharged the plaintiff's alleged claim by a payment to him of the full amount thereof.

WHEREFORE, the defendant demands judgment that the complaint herein be dismissed, together with the costs and disbursements of this action.

(*EZRA WILLIAMS*),
Attorney for Defendant,
Office and Post Office Address,
(*No. 15 William Street*),
(*New York City*.)

(Verification.)

Accord and Satisfaction

FORM No. 142

Answer Alleging an Accord and Satisfaction

SUPREME COURT,
(*New York*) County.

(*FRANK WILBUR,*)

Plaintiff,

against

(*TROY BRASS & COPPER COM-
PANY,*) Defendant.

The defendant for answer to the complaint in the above-entitled action for a separate defense to the plaintiff's complaint herein, alleges that subsequently to the purchase of the said gas plant and blower by the defendant from the plaintiff at the sum of (\$2,590), and the engine at the sum of (\$200), and in or about the month of (*August, 1914*), the said arrangement respecting the purchase of the gas plant, blower and engine was altered in or about the month of (*September, 1914*), by an agreement in writing, executed by the plaintiff and delivered to the defendant providing for the immediate payment by the defendant for and on account of the plaintiff of the sum of (\$600), and expressly altering and abrogating the original agreement hereinbefore referred to, it being understood and agreed thereby in writing that upon the immediate payment of said sum of (\$600), by the defendant for and on account of the plaintiff, the balance due plaintiff, from defendant was to be the sum of (\$545.90); that this defendant, on or about (*September 20, 1914*), in accordance with said agreement, paid said sum of (\$600), and subsequently and on or about (*October 10, 1914*), the defendant paid to the plaintiff the said balance of (\$545.90) in full satisfaction and discharge of the claim of the plaintiff in the complaint mentioned, and in full of all demands to that date.

WHEREFORE, defendant demands judgment that the complaint herein be dismissed with the costs and disbursements of this action.

(*JOHN LARKIN,*)

Attorney for Defendant.

Office and Post Office Address,

(*261 River Street,*)

(Verification.)

(*Troy, N. Y.*)

Alleging Usury

(*WILLIAM THOMPSON,*)
 against Plaintiff,
 (*FREDERICK SMITH,*)
 Defendant.

(Verification.)

Statute of Frauds

FORM No. 144

Pleading Statute of Limitations

SUPREME COURT,
(*New York*) County.

(<i>WILLIAM THOMPSON</i> ,)	} Plaintiff,
against	
(<i>FREDERICK SMITH</i> ,)	
Defendant.	

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint of the plaintiff herein, alleges:

That the cause of action stated in the complaint did not accrue within (*six*) years before the commencement of this action, and that said action is barred by the Statute of Limitations.

WHEREFORE, the defendant demands judgment that the complaint herein be dismissed, with costs and disbursements of this action.

(*EZRA WILLIAMS*,)
Attorney for Defendant,
Office and Post Office Address,
(*No. 15 William Street*,)
(*New York City*.)
(Verification.)

FORM No. 145

Setting Up Statute of Frauds *

SUPREME COURT,
(*New York*) County.

(<i>WILLIAM THOMPSON</i> ,)	} Plaintiff,
against	
(<i>FREDERICK SMITH</i> ,)	
Defendant.	

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint herein, alleges:

That the alleged agreement, as set forth in the complaint, by its terms was not to be performed within the space of one year from the making thereof;

* See 180 N. Y. 336.

Statute of Frauds

That neither the said agreement nor any memorandum thereof was ever made or exists in writing, and signed or subscribed by the said defendant who is sought to be charged thereby, or by his lawful agent, and that any such alleged agreement is, therefore, as defendant is informed and believes, void as against this defendant, pursuant to the statute in such case made and provided.

WHEREFORE, the defendant demands judgment that the complaint herein be dismissed, together with the costs and disbursements of this action.

(EZRA WILLIAMS,)

Attorney for Defendant,
Office and Post Office Address,
(No. 15 William Street,) (New York City.)
(Verification.)

FORM No. 146

Setting Up Statute of Frauds — Sale of Goods, Value Over \$50, Not in Writing*

SUPREME COURT,
(New York) County.

(WILLIAM THOMPSON,)	} Plaintiff,
against	
(FREDERICK SMITH,)	
Defendant.	

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint herein, alleges:

That the said alleged agreement set forth in the complaint herein, was for the sale of goods, at an agreed price of more than \$50.00;

That neither said agreement, nor any note or memorandum thereof, was ever made or exists in writing, and signed or subscribed by the said defendant, who is sought to be charged thereby, or by his lawful agent; nor did the said purchaser accept or receive any part of such goods; nor did the said buyer pay any part of the purchase money; and that any such alleged agreement is, therefore, as defendant is informed and believes, void as against this defendant pursuant to the statute in such case made and provided.

* See 180 N. Y. 336.

General Release

WHEREFORE, the defendant demands judgment that the complaint of the plaintiff herein be dismissed, together with the costs and disbursements of this action.

(EZRA WILLIAMS,)

Attorney for Defendant,

Office and Post Office Address,

(No. 15 William Street,)

(New York City.)

(Verification.)

FORM No. 147

Answer Setting Up General Release

SUPREME COURT,
(New York) County.

(WILLIAM THOMPSON,)	} Plaintiff,
against	
(FREDERICK SMITH,)	
Defendant.	

The defendant above named, by (Ezra Williams), his attorney, answering the complaint herein, alleges:

That on the (8th) day of (February, 1916), plaintiff, for a valuable consideration, executed and delivered to the defendant a release of the defendant of and from all liability to plaintiff for any and all claims of plaintiff against defendant, including the alleged cause of action set forth in the complaint, which existed at the date of the execution of said release, or which might thereafter arise against the defendant for and on account of anything or things done by the defendant prior to the date of execution of said release.

WHEREFORE, the defendant demands judgment that the complaint herein be dismissed, together with the costs and disbursements of this action.

(EZRA WILLIAMS,)

Attorney for Defendant,

Office and Post Office Address,

(No. 15 William Street,)

(New York City.)

(Verification.)

Answer by a Corporation to Complaint Based Upon a Note, etc.

... In an action against a corporation on a promissory note or other evidence of debt, unless the defendant serves with his answer or demurrer a judge's order directing that the issues presented thereby be tried, the plaintiff may when time to plead has expired, take judgment, as upon default. (§ 1778, Code.)

Retaining the pleading, however, is a waiver. (See 3 Brad. Pl. & Pr. Reports, 1, and note on this subject generally.)

FORM No. 148

Order Directing Issues to be Tried

SUPREME COURT,
(*New York*) County.

(<i>LOUIS LAKE,</i>)	} Plaintiff,
against	
(<i>THE CONSUMERS COMPANY,</i>)	
Defendant.	

Upon the complaint herein, and upon the annexed (*answer*) [or demurrer] of the defendant corporation and the affidavit of (*John Banks*), verified the (*22d*) day of (*August* 1916), and upon motion of John Milbank, attorney for said defendant, it is

ORDERED that the issues presented by said pleadings be tried.

Dated, (*August 23, 1916*).

(*GEORGE V. MULLAN,*)

Justice of the Supreme Court.

By Corporation — Action on Note

FORM No. 149**Affidavit to Obtain Order Directing Issues to be Tried**

SUPREME COURT,

(New York) County.

(LOUIS LAKE,	} .
against Plaintiff,	
(THE CONSUMERS COMPANY,) Defendant.	

STATE OF NEW YORK, }
County of (New York), }

(JOHN BANKS), being duly sworn, deposes and says:

He is (*an attorney at law, employed in the office of John Milbank*), the attorney for the defendant herein, and has entire charge of this action. That said (*John Milbank*) has been retained to defend this action for the defendant herein, and said (*Milbank*) has an office at (56 Wall Street) in the (*Borough of Manhattan, City of New York*); that (*James Hall*) is the (*president*) of the said defendant and is entirely acquainted with the facts of the case; that said (*James Hall*) has fully and fairly stated the facts of the case to deponent, and after such statement so made, deponent verily believes, and has so advised said (*James Hall*), that the defendant has a good and substantial defense upon the merits to the cause of action set forth in the complaint; and that defendant intends to defend this action in good faith and thereupon and to that end deponent prepared the amended (*answer*).

That the summons and complaint was served upon the defendant on the (10th) day of (*August, 1916*), and the same are now on file, that the time for defendant to answer or demur will expire on the (30th) day of (*August, 1916*).

[Add any other fact not shown on face of answer why defendant has a right to defend.]

That the *answer* [or demurrer] hereto annexed is intended to be served herein and an order is asked for as provided in section 1778 of the Code of Civil Procedure to accompany said pleading.

That no previous application for an order has been made.

Sworn to before me this	} (JOHN BANKS.)
(22d) day of (<i>August, 1916</i> .)	
(MARY MILLS,)	

Notary Public,
(New York) County.

MOTIONS FOR JUDGMENT ON PLEADINGS

If either party is entitled to judgment upon the pleadings, the court may upon motion at any time after issue joined give judgment accordingly. (§ 547 of the Code.)*

The only papers used on the argument of the motion are the pleadings in the case.

The court may, however, require submission upon the settlement of the order of whatever affidavits it may deem necessary in its discretion in order to determine whether an unsuccessful party should be given leave to plead over, *e. g.*, showing facts which will enable him to overcome the defects in the pleading held to be bad or to interpose an answer or reply as the case may be in place of an overruled demurrer. (*Cappadonna v. Ill. Surety Co.*, 123 N. Y. Supp. 341.)

Where a motion has been made for judgment on the pleadings under section 547 of the Code of Civil Procedure, it has been held that such a motion is equivalent to a demurrer for insufficiency (*Chism v. Smith*, 210 N. Y. 198; *Abbott v. Easton*, 195 *id.* 372) and that such motion cannot be granted if the facts stated show that the plaintiff is entitled to any relief, either legal or equitable. (*Clark v. Levy*, 130 App. Div. 389; *Gee v. Pendas*, 66 *id.* 566. See also 171 App. Div. 725.)

On motion for judgment on the pleadings, it is within the power of the Court to grant an extra allowance. (170 App. Div. 265.)

A direct appeal will lie from the order granting or denying a motion for judgment on the pleadings provided the motion is made before the trial.

The denial of a motion made at the opening of the trial to dismiss the complaint, is reviewable only on an appeal from the judgment made in the action. (*Jackman v. Hashouck*, 168 App. Div. 256.)

*This remedy is in addition to the following motions that may be made.

1. Plaintiff's motion for judgment upon a frivolous answer or demurrer.
2. Defendant's motion upon a frivolous reply.
3. Motion to strike out irrelevant and redundant or scandalous matter by either party.

This provision of course does not authorize the elimination on motion of the whole of the complaint or answer, but merely those allegations which are irrelevant to the cause of action or defense attempted to be set up, whether same are good or bad.

4. Plaintiff's motion to strike out sham answer.
- (See 155 App. Div. 118; 198 N. Y. 449; 205 N. Y. 127.)

 Notice of Motion

In the First Department, the rule is that a party should have leave to amend almost as of course when his pleading has been held to be insufficient on a motion under § 547, Code. (See 133 *N. Y. Supp.* 824.)

Motions for judgment on the pleadings in the County of New York, are made returnable at Part III, Special Term at 10:15 A. M., except in the months of July, August and September, when they are made returnable at Part I at 10:30 A. M.

(See also Notes on Dilatory Answers, p. 398; Disposition of Demurrers, p. 416; Motions relating to pleadings, p. 376.

FORM No. 150

**Notice of Motion for Judgment by Plaintiff Where Answer or
Demurrer Has Been Interposed**

SUPREME COURT,
(*New York*) County.

(LOUIS BOSTON,)	Plaintiff,
against	
(JANE ROSE,)	Defendant.

Sirs:

PLEASE TAKE NOTICE that upon the pleadings in this action heretofore filed herein, the undersigned will move this Court at Special Term, (*Part III*) thereof, to be held at the County Court House in the (*Borough of Manhattan, City of New York*), on the (*21st*) day of (*October, 1916*) at 10.15 o'clock A. M., or as soon thereafter as counsel can be heard, for judgment on the pleadings in favor of the plaintiff, and for such other and further relief in the premises as to the Court may seem just and proper.

Dated, (*New York, October 15, 1916.*)

Yours, etc.,

(*JAMES & FINN,*)

Attorneys for Plaintiff,

To

Messrs. (*FINCH & BARR,*)

Attorneys for Defendant,

(*161 Broadway,*)

(*New York City.*)

(*29 Broadway,*)

(*New York City.*)

Notice of Motion

FORM No. 151

Notice of Motion by Defendant for Judgment Where Answer or
Demurrer Has Been InterposedSUPREME COURT,
(*New York*) County.

(CHARLES BEST,)

Plaintiff,

against

(JOHN LAMB,)

Defendant.

Sirs:

PLEASE TAKE NOTICE that upon the pleadings in this action heretofore filed herein, the undersigned will move this Court at a Special Term, (*Part III*) thereof, to be held at the County Court House in (*the Borough of Manhattan, City of New York,*) on the (*5th*) day of (*October, 1916*) at 10:15 o'clock A. M. or as soon thereafter as counsel can be heard for judgment on the pleadings dismissing the complaint in the above-entitled action, with costs, and for such other and further relief as to the Court may seem just and proper.

Dated, (*New York, September 29, 1916.*)

Yours, etc.,

(DUNN & ROSE,)

Defendant's Attorneys,

(41 *Park Row,*)(*Borough of Manhattan,*)(*City of New York.*)

To

(JACOB BOLAN,)

Plaintiff's Attorney,

Judgment

FORM No. 152

Judgment

SUPREME COURT,
(*New York*) County.

(*LOUIS CHARLES*),

Plaintiff,

against

(*CHARLOTTE JOYCE*),

Defendant.

A motion having been made herein at Special Term, (*Part III*) of this Court, on behalf of the (*plaintiff*) for judgment in his favor on the pleadings consisting of a complaint and the answer thereto, and said motion having been granted and an order having been made by Mr. Justice (*John Ford*), dated and entered in the office of the Clerk of the County of (*New York*), on (*November 3, 1916*), granting said motion.

It is on motion of (*Barr & Loamer*), attorneys for the (*plaintiff*),

ADJUDGED that the (*plaintiff, Louis Charles*), recover of the (*defendant*) (*Charlotte Joyce*), the sum of (*Two hundred and four and 90/100 dollars (\$204.90)*) the amount claimed with interest, together with the sum of (*Nineteen and 27/100 (\$19.27)*) dollars costs and disbursements, amounting in all to the sum of (*Two hundred twenty-four and 17/100 (\$224.17)*) dollars, and have execution therefor.

Dated, (*New York, November 9, 1916*).

(*WILLIAM F. SCHNEIDER*),

Clerk.

Order Denying Motion

FORM No. 153

Order Denying Motion for Judgment on the Pleadings — Complaint and Demurrer

At a Special Term, (*Part III*) of the Supreme Court held in and for the County of (*New York*), at the County Court House in the (*Borough of Manhattan, City of New York,*) on the (*20th*) day of (*January, 1916*).

PRESENT:

Hon. (*BARTOW S. WEEKS,*)

Justice.

(*THOMAS CUSTER, administrator
of the goods, chattels and credits of
George Custer, deceased,*)

Plaintiff,

against

(*EAST RAILROAD COMPANY,*)

Defendant.

The above-named (*plaintiff*) having duly moved this Court by a notice of motion dated (*November 25, 1915*), returnable on the first day of (*December, 1915*) for an order for judgment on the pleadings, in favor of said (*plaintiff*), and said motion having duly come on to be heard, and after hearing Mr. (*Isaac Swann*), of counsel for the (*plaintiff*), in support of said motion, and Mr. (*William Washington*) of counsel for the (*defendant*) in opposition thereto;

NOW, on reading and filing said notice of motion, copies of the amended complaint and the demurrer thereto; and due deliberation having been had, (*upon filing the opinion of the Court,*) it is on motion of (*William Washington*), attorney for (*defendant*),

ORDERED, that the said motion be and the same hereby is in all respects denied with ten dollars costs.

Enter,

(*B. S. W.,*)

J. S. C.

AFFIDAVITS OF SERVICE

FORM No. 154

Of Summons

SUPREME COURT,
(*New York*) County.

(*JOHN JONES*),

Plaintiff,

against

(*RICHARD ROE*),

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM RICH*), being duly sworn, says that on the (2nd) day of (*March*, 1913,) at (*No. 17 William Street, Borough of Manhattan, New York City*), deponent being then more than 21 years* of age, he served the annexed summons (and notice of judgment in case of default, or notice of no personal claim, or endorsement of reference to statute) personally in this action upon (*Richard Roe*), the defendant herein, personally, by delivering to and leaving with said defendant a true copy thereof. Deponent further says that he knows the person so served to be the person mentioned and described in said summons as (*Richard Roe*), the defendant herein.

(*WILLIAM RICH*.)

Sworn to before me, this }
(2nd) day of (*March*, 1913). }

(*RICHARD ROGERS*),

Notary Public,

(*New York*) County, No. (2).

*Or if under 21 years of age, must be stated. The server must be at least 18 years old.

Summons and Complaint

FORM No. 155

Of Summons and Complaint

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i> ,)	} Plaintiff,
against	
(<i>JOHN DOE</i> ,)	} Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM PARKER*,) being duly sworn, deposes and says:

That on the (*second*) day of (*February*, 1913), at No. (243 *East 29th Street, in the Borough of Manhattan, City of New York*), deponent being then over 21 years of age, he served the annexed summons and complaint in this action personally on (*John Doe*), the defendant in this action, by delivering copies of the same to such defendant and leaving the same with him.

He further says, that he knew the person served as aforesaid, to be the person mentioned and described in said summons as (*John Doe*), the defendant in this action.

(*WILLIAM PARKER*.)

Sworn to before me, this }
(3d) day of (*February*, 1913.) }

(*RICHARD ROE*,)

Notary Public,

(*New York*) County, No. (2).

FORM No. 156

Affidavit of Service — Of Summons, Divorce

SUPREME COURT,
(*New York*) County.

(<i>RUPERT GREEN</i> ,)	} Plaintiff,
against	
(<i>ANNA GREEN</i> ,)	} Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*HENRY ESMONDE*), being duly sworn, deposes and says:

That he resides at (30 *West 10th*) Street, in (*the Borough of Manhattan, City of New York*). That on the (24th) day of (*June, 1915*) at (*No. 243 West 29th Street in the Borough of Manhattan, City of New York*), at about (11) o'clock in the forenoon on said day, deponent being then over 21 years of age, he served a copy of the annexed summons and complaint in the above-entitled action upon (*Anna Green*), the defendant named herein, by delivering to, and leaving with her personally, a true copy thereof.

Deponent further says that he knew the person who was served as aforesaid to be the person named and described in said summons and complaint as the defendant in this action, and that the sources of deponent's knowledge, and the grounds of his belief as to the identity of said person so served, are that he was accompanied at the time of making such service by (*Katherine Green*), who, previous to such service, stated to deponent that she well knew said (*Anna Green*) and had been personally acquainted with her for (10) years, as appears by the affidavit of said *Katherine Green* hereto annexed. And she then and there pointed out to the deponent the person so served as the said (*Anna Green*), and stated to the deponent that she was the person mentioned and described as the defendant in the said summons and complaint. At the time of making such service deponent asked the person so served by him if she was (*Anna Green*) and she stated to deponent that she was (*Anna Green*).

Summons — On Corporation

*Deponent further says that said summons served as aforesaid had the words "action for a divorce" legibly written upon the face thereof.

(HENRY ESMONDE.)

Sworn to before me this }
(24th) day of (June, 1915). }

(ARTHUR BENSON,)

Notary Public,

(New York) County.

FORM No. 157

Of Summons on Corporation

SUPREME COURT,
(New York) County.

(JOHN JONES,)

Plaintiff,

against

(BROWN MANUFACTURING
COMPANY,)

Defendant.

STATE OF NEW YORK, }
County of (New York), } ss.:

(WILLIAM RICH,) being duly sworn, says that he is a clerk in the office of (Downs & Downs), the attorneys for the plaintiff, and that on the (18th) day of (March, 1916), at (60 Wall Street, in the Borough of Manhattan, City of New York), deponent being then 19 years of age, he served the annexed summons and complaint, personally, on the above-named (Brown Manufacturing Company), the defendant herein, by delivering copies thereof to (William Brown, of New York City), personally, and leaving the

* Last clause not necessary where the complaint is served with the summons within the State.

Summons — On Corporation

same with him, and that he knew said (*William Brown*) to be at that time the president of the said (*Brown Manufacturing Company*), and knew the corporation so served to be the company mentioned and described in the said summons as the defendant in this action.

(*WILLIAM RICH.*)

Sworn to before me this }
(22nd) day of (*March*, 1916). }

(*OLIVER JOHNSON,*)

Notary Public,

(*New York*) County.

Service of Summons and Complaint on Foreign Corporation

As to service on a foreign corporation see *Grant v. C. C. C. Co.*, 189 N. Y. 241; 54 Misc. 49. (*Pomeroy v. Hocking Valley R. R. Co.*, 218 N. Y. 530; *Bagdon v. Phila. & R. C. & I. Co.*, 217 N. Y. 432.)

The dicta in the *Grant case*, 189 N. Y. 248, as to service on an officer temporarily in the State as good service must yield to the later decision in 237 U. S. 189. See 217 N. Y. 438.

The following form is taken from the *Pomeroy case*. There is a question whether the affidavit should not show knowledge in the process server that the officer served was in the State officially representing the company in its business.

FORM No. 158

Affidavit of Service — On Officer of Foreign Corporation

SUPREME COURT,
(*New York*) County.

(DANIEL E. POMEROY, WALTER
BUCKNER, LEWIS L. CLARKE
and STACY C. RICHMOND,)

Plaintiffs,

against

(THE HOCKING VALLEY RAIL-
WAY COMPANY,)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(HOWARD C. REID,) being duly sworn, says that he is a clerk in the office of (*White & Case*), the attorneys for the plaintiffs, and that on the (3rd) day of (*February*, 1916,) at (71 *Broadway, Borough of Manhattan, City of New York*,) deponent being then more than 21 years of age, he served the annexed summons and complaint, personally, on the above-named (*The Hocking Valley Railway Company*,) the defendant herein, by delivering

On Officer of Foreign Corporation

cop(ies) thereof to (*James A. Mackie*,) personally, and leaving the same with him, and that he knew said (*James A. Mackie*,) to be at that time the (*treasurer*) of the said (*The Hocking Valley Railway Company*,) and knew the corporation so served to be the company mentioned and described in the said summons as the defendant in this action.

(*HOWARD C. REID*.)

Sworn to before me this }
(3rd) day of (*February*, 1916.) }

(*ERNEST G. TIFELD*.)

Notary Public

(*New York*) County.

Service of Summons and Complaint on Infant (under 14)

In the case of service of a summons upon an infant under 14 years, it is not sufficient to serve the "father, mother or guardian; or, if there is none within the State, the person having the care and control of him, or with whom he resides, or in whose service he is employed." By amendment in 1913 it is provided as follows:

"Where the defendant is an infant under the age of fourteen years, the Court shall, in the defendant's interest, make an order, requiring a copy of the summons to be also delivered, in behalf of the defendant, to a person designated in the order, and that service of the summons shall not be deemed complete until it is so delivered." (§ 426, Code.) By this amendment service upon the infant was dispensed with.

FORM No. 159

Of Summons on Party Designated to Receive Same

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	}
Plaintiff,	
against	
(<i>RICHARD ROE,</i>)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM RICH,*) being duly sworn, says that on the (*8th*) day of (*July, 1916,*) at (*27 Cedar Street, Borough of Manhattan, New York City*), deponent being then (*more than 21 years**) of age, he served the annexed summons (*and complaint*) personally in this action upon (*Robert Ray*), the person designated in an order of this Court, dated (*July 7, 1916,*) to whom a copy

*Age must be stated. The server must be at least 18 years old, if under 21.

Summons and Complaint—On Infant

of the summons in this action should be delivered in the interests of the infant defendant, (*Richard Roe*,) personally, by delivering to and leaving with said (*Robert Ray*,) a true copy thereof. Deponent further says that he knows the person so served to be the person mentioned and described in said order as (*Robert Ray*,) the person so designated by said order.

(*WILLIAM RICH.*)

Sworn to before me, this }
(8th) day of (*July*, 1916.) }

(*RICHARD ROGERS*,)

Notary Public,

(*New York*) County No. (2).

FORM No. 160

Affidavit of Service on Infant

SUPREME COURT,

(*New York*) County.

(*JOHN JONES*,)

Plaintiff,
against

(*RICHARD ROE*) and (*MARY*
(*ROE*,)

Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM MURCH*,) being duly sworn, deposes and says that he is a clerk in the office of (*Johnson & Miller*), attorneys for the plaintiff herein, and that, on the (16th) day of (*February*, 1916), at (*No. 85 Fifth Avenue, Borough of Manhattan, City of New York*), deponent then being more than 21 years of age, he served the annexed summons and complaint upon (*Mary Roe*), an infant under 14 years of age, by delivering the copy thereof to (*Richard Roe*), the father * of the said (*Mary Roe*), then having the care and control of the said (*Mary Roe*) and with whom

Summons and Complaint—Personally—Without the State

the said (*Mary Roe*) was then residing; that deponent knew said (*Richard Roe*) to be the father * of the said defendant.

(*WILLIAM MURCH.*)

Sworn to before me, this }
(2nd) day of (*March, 1916.*) }

(*OLIVER JOHNSON,*)

Notary Public, No. —,
New York (*County.*)

FORM No. 161

**Affidavit of Service of Summons and Complaint, Personally, Without
the State†**

SUPREME COURT,
(*New York*) County.

(*JOHN JONES,*)

Plaintiff,

against

(*WILLIAM SMITH and RICHARD
ROE,*)

Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*FRANK DENT,*) being duly sworn, deposes and says that he is over the age of 21 years and (*resides at No. 1 West 12th*

* Or mother or guardian or, if there is none within the State, to the person, if any, then having the care and control of said *Mary Roe* or with whom said *Mary Roe* was then residing or in whose service said *Mary Roe* was then employed, in either case adding facts as to parents and guardianship showing that she had none within this State.

(§ 426, Sub-div. 1, of the Code of Civil Procedure.)

† The summons must be served personally without the State by a resident or citizen of the State of New York, or a sheriff, or under sheriff, deputy sheriff, constable of the county or other political subdivision in which the service is made, or an officer authorized by the laws of this State to take acknowledgments of deeds to be recorded in this State, an attorney and counsellor at law duly qualified to practice in the State where such service is made or by a United States marshal.

The affidavit of service must contain the official designation of the person making it and must have annexed thereto a certificate of the proper official showing that the person before whom the affidavit was sworn to was, at the time of the administering the oath, qualified to act. (Section 443, Code.)

Papers Other Than Summons

Street, in the Borough of Manhattan, City of New York. That he is a resident and citizen of the State of New York.) That on the (8th) day of (August, 1916), he served the summons and complaint in this action upon (William Smith,) one of the defendants in the above-entitled action at (No. 678 South Maine Street, City of Wilkes Barre, County of Luzerne, State of Pennsylvania,) by delivering a true copy of said summons and complaint to said defendant, (William Smith,) personally and leaving the same with him. That a copy of the said complaint was annexed to and served with said summons. He further says that he knew the person served as aforesaid to be one of the defendants in said action and the person mentioned and described in said summons and complaint as one of the defendants.

(FRANK DENT.)

Sworn to before me, this }
(9th) day of (August, 1916.) }

(JOHN COLE,)

Notary Public,

(New York) County.

FORM No. 162

Of Papers (Other than Summons)

SUPREME COURT,
(New York) County.

(JOHN JONES,)

Plaintiff,

against

(JOHN DOE,)

Defendant.

STATE OF NEW YORK, }
County of (New York), } ss.:

(WILLIAM JONES,) being duly sworn, says:

That on the (12th) day of (July, 1916,) at (No. 202 East 12th Street, Borough of Manhattan, City of New York,) he served

Judge's Order

the annexed *notice* upon (*John Doe*) by delivering to and leaving with him a copy thereof.

(*WILLIAM JONES.*)

Sworn to before me, this }
(12th) day of (*July*, 1916.) }

(*RICHARD ROE,*)

Notary Public,

(*New York*) County, No. (2).

FORM No. 163

Of Judge's Order — Exhibiting Signature

SUPREME COURT,

(*New York*) County.

(*JOHN JONES,*)

Plaintiff,

against

(*JOHN DOE,*)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM RICH,*) being duly sworn, says that he is a clerk in the office of (*Higgins & Hughes*), attorneys for the plaintiff herein, and that on the (12th) day of (*July*, 1916), at (22 *West Fortieth Street, Borough of Manhattan, City of New York*), deponent then being over 21 years of age, he served upon (*John Doe*), the (*defendant*), the annexed order (*and a copy of the annexed affidavit*) by delivering a true copy of (*said affidavit, and a true copy of*) said order to said (*John Doe*) personally, and leaving same with him, and at the same time and place exhibiting to him the annexed original order, and the signature of (*John Ford*), justice, thereunto subscribed. And that he knew the said (*John Doe*) to be the individual mentioned and described in said affidavit and order.

(*WILLIAM RICH.*)

Sworn to before me, this }
(12th) day of (*July*, 1916.) }

(*RICHARD ROE.*)

Notary Public,

(*New York*) County, No. (2).

Court Order

FORM No. 164

Of Court Order — Leaving Copy

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	} Plaintiff,
against	
(<i>JOHN DOE,</i>)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM RICH,*) being duly sworn, says that he is a clerk in the office of (*Higgins & Hughes*), attorneys for (*the plaintiff*) herein, and that on the (*12th*) day of (*July, 1916*), at (*22 West 40th Street, Borough of Manhattan, City of New York*), deponent then being (*over twenty-one years*) of age, he served upon (*John Doe*), the defendant, the annexed order and copy of the annexed affidavit by delivering a copy of the said affidavit and a copy of the said order to said (*John Doe*), personally, and leaving the same with him. At the same time deponent exhibited to him a true copy of the said order duly certified at the foot thereof by (*William F. Schneider*), Clerk of the County of (*New York*), in whose office said order had been duly entered.

(*WILLIAM RICH.*)

Sworn to before me, this }
(*12th*) day of (*July, 1916.*) }

(*RICHARD ROE,*)

Notary Public,

(*New York*) County, No. (2).

On Attorney — Office Closed

FORM No. 165

On Attorney When His Office is Closed

SUPREME COURT,
(*New York*) County.

(*JOHN JONES*),

Plaintiff,

against

(*JOHN DOE*),

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM RICH*), being duly sworn, says that he is a clerk in the employ of (*Brown & Mills*), the attorneys for the (*plaintiff*) herein; that on the (*12th*) day of (*March*, 1916), at (2:30) o'clock (*P. M.*), he served the annexed order upon (*Alexander Duffield*), attorney for (*defendant*), by depositing a true copy thereof, enclosed in a sealed wrapper directed to him, in his office letter box, at his office, (*No. 8 Pine Street, New York City*), which is the office address given by said attorney in the last paper served by him herein, said attorney being absent at the time of such service, and his office closed.

(*WILLIAM RICH*.)

Sworn to before me, this }
(*12th*) day of (*March*, 1916.) }

(*RICHARD ROE*),

Notary Public,

(*New York*) County, No. (2).

On Attorney—During Absence

FORM No. 166

On Attorney During Absence (Office Open, no Person in Charge)

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i> ,)	} Plaintiff,
against	
(<i>JOHN DOE</i> ,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss..

(*WILLIAM RICH*,) being duly sworn, says that he is a clerk in the employ of (*Brown & Mills*), the attorneys for the (*plaintiff*) herein; that on the (*12th*) day of (*March*, 1913), at (2:45) o'clock (*P.*) M.,* he served the annexed order upon (*Alexander Duffield*), attorney for (*defendant*), by leaving a true copy thereof in a conspicuous place in his office (*No. 8 Pine street, New York City*), which is the office address given by him on the last paper heretofore served by him herein, to wit: (*on a large flat top desk in the outer office*), said attorney being absent at the time of such service, and there being no person in charge of his said office at such time.

(WILLIAM RICH.)

Sworn to before me, this }
(*12th*) day of (*March*, 1913). }

(*RICHARD ROE*,)
Notary Public,
(*New York*) County, No. (2).

* Must be between 6 a. m. and 9 p. m. (Section 797, Code.)

 On Attorney—Person in Charge

FORM No. 167

Upon Person in Charge

SUPREME COURT,
(*New York*) County.

(JOHN JONES,)	}	Plaintiff, against Defendant.
against		
(JOHN DOE,)		

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(WILLIAM RICH), being duly sworn, says that he is a clerk in the employ of (*John Elwell*), the attorney for the (*plaintiff*) herein; that on the (*12th*) day of (*March*, 1913), at (2:45) o'clock (*P.*) M., he served the annexed order upon (*Alexander Duffield*), attorney for (*defendant*) by delivering a true copy thereof to, and leaving it with a person in charge of his office, at (*No. 8 Pine street, New York City*), which is the office address designated by him in the preceding paper herein; said attorney being absent at the time of such service.

(WILLIAM RICH.)

Sworn to before me, this }
(*12th*) day of (*March*, 1913). }

(RICHARD ROE.)
Notary Public,
(*New York*) County (No. (2)).

On Attorney — By Mail

FORM No. 168

On Attorney — By Mail*

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	} Plaintiff,
against	
(<i>JOHN DOE,</i>)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM RICH,*) being duly sworn, says that he is a clerk in the employ of (*John Freeman*), the attorney for the (*plaintiff*) herein; that on the (*12th*) day of (*March*, 1916), at (2:45) o'clock (*P.*) M., he served the annexed order upon (*Alexander Duffield*), attorney for (*defendant*), by depositing a true copy thereof in the United States Mail at the General Post-Office, New York City (or at the branch post-office known as the Wall Street Branch, Borough of Manhattan, City of New York, the same being one of the regular branch post-offices of the New York City General Post-Office), inclosed in a securely closed wrapper, with the postage thereon prepaid, addressed to said attorney at his office, No. (52 William Street, Borough of Manhattan, City of New York), that being the address designated by him in the last papers served by him herein.

(*WILLIAM RICH.*)

Sworn to before me, this }
(*12th*) day of (*March*, 1916). }

(*RICHARD ROE,*)

Notary Public,
(*New York*) County, No. (21).

* As to proper service by mail of a citation, order, notice or paper in Surrogates' Court, see § 2768, subd. 18.

Subpœna

FORM No. 169

Affidavit of Service of Subpœna

SUPREME COURT,
(*New York*) County.

(<i>HENRY FOLMER,</i>)	}
Plaintiff,	
against	
(<i>SAMUEL SEELEY,</i>)	}
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JAMES SINCOE,*) being duly sworn, says that on the (26th) day of (*February*, 1916), he served the annexed subpœna personally on (*Edward Fairchild*), the person therein named as witness, by then and there exhibiting to him the said original subpœna, and delivering to him a copy thereof and paying to him, at the same time and place (*one dollar and thirty cents*), as and for his fees for traveling from (*29 West 155th St., Borough of Manhattan, City of New York*), which then was the residence of the said (*Edward Fairchild*), to the place mentioned in said subpœna, and return thereupon, and for one day's attendance as such witness.

(*JAMES SINCOE.*)

Sworn to before me, this }
(26th) day of (*February*, 1916.) }

(*JOHN JONES,*)

Notary Public, No. (16).

(*N. Y.*) County.

FORM No. 170

Affidavit of Service of Subpoena in Case of Several Witnesses

SUPREME COURT,
(*New York*) County.

(<i>HENRY FOLMER,</i>)	}
Plaintiff,	
against	
(<i>SAMUEL SEELEY,</i>)	}
Defendant.	

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*JAMES SINCOE,*) being duly sworn, says that the witnesses after named, respectively reside at and were served at the places hereinafter so designated. That deponent, at the times and places below set forth, served the annexed subpoenas personally upon each of the witnesses below named, by exhibiting said original subpoena to each of such witnesses and delivering to him or her a copy thereof, and paying to each of them the sum set opposite his name, as and for the traveling fees of such witness, respectively, from the residence of each of said witnesses, to the place mentioned in the subpoenas and return therefrom, and one day's attendance as such witness.

On	Residence	Place service	Date	Am't paid
(<i>Thomas Short,</i>)	(34 <i>Pine Ave.,</i> <i>Troy, N. Y.</i>)	(220 <i>Broadway,</i> <i>New York, N. Y.</i>)	(<i>Feb. 26, 1916</i>	\$13)
(<i>Fannie Wilks,</i>)	(23 <i>E. 23rd St.,</i> <i>New York, N. Y.</i>)	(521 <i>8th Ave.,</i> <i>New York, N. Y.</i>)	(<i>Feb. 28, 1916</i>	.50)
(<i>Gabriel Johnson,</i>)	(700 <i>5th Ave.,</i> <i>New York, N. Y.</i>)	(700 <i>5th Ave.,</i> <i>New York, N. Y.</i>)	(<i>Feb. 15, 1916</i>	.72)

(*JAMES SINCOE.*)

Sworn to before me, this }
(1st) day of (*March, 1916.*) }

(*JOHN WINTHROP,*)
Notary Public (*New York*) County.

ACCOUNTS AND BILLS OF PARTICULARS

FORM No. 171

Demand for Copy of Account*

SUPREME COURT,
(*New York*) County.

(<i>WILLIAM THOMPSON</i>),	}
Plaintiff,	
against	
(<i>FREDERICK SMITH</i>),	
Defendant.	

Sir:

I hereby demand that you deliver to me within (*ten*) days from the date of the service of this demand, a verified copy of the account referred to in the complaint in this action.

Dated, (*May 2, 1916.*)

Yours, etc.,

(*JOHN PRESTON*),

Attorney for Defendant,

Office & P. O. Address,

(*15 William Street,*)

(*New York City.*)

To

(*WILLIAM RUSSELL*),

Attorney for Plaintiff,

(*27 Pine Street,*)

(*New York City.*)

* See note, page 457.

BILLS OF PARTICULARS

There is no provision authorizing the service of a demand for a bill of particulars except in an action upon an account. A demand therefor in any other kind of action is a nullity and may be disregarded or may even, on motion, be stricken out. (88 *App. Div.* 237, 47 *Misc.* 5, 165 *App. Div.* 945.) It is, however, common practice to serve a demand (in actions other than on an account) before making a motion for a bill of particulars, although of no legal force, as it may have a bearing upon the court's exercise of discretion as to costs.

It is improper to insert in the order for the service of a bill of particulars a provision precluding the party required to give the particulars, from giving evidence in support of his allegations. That question can only be presented after the bill of particulars has been ordered and defendants have failed to give the particulars required. If the party fails to furnish the particulars required, the other party may then move to preclude him from giving evidence of those matters as to which he had failed to furnish the bill of particulars. (163 *App. Div.* 943, 167 *App. Div.* 444.)

Even in the case of a failure to serve a copy of the account pursuant to the demand it is not sufficient to rely upon the provisions of section 531 of the Code of Civil Procedure to exclude evidence of the items of the account. An order must be obtained at Special Term, before trial, for that purpose. (120 *N. Y.* 33, 138 *App. Div.* 786, 141 *App. Div.* 68.)

The former rule that in order to obtain a bill of particulars the affidavit must show the ignorance of the applicant as to the particulars sought, and that they are within the knowledge of the other party is no longer followed. Under the modern practice the question is not what may have been the actual facts nor the knowledge of the opposite party concerning them, but rather what the aggrieved party claims them to be. (*Rubenfeld v. Stolts*, (*Sup. Ct.*) 55 L. J. 1102 (June 20, 1916), Giegerich, J.)

The granting of a bill of particulars does not depend upon the actual facts nor upon the knowledge of either party concerning them, but depends upon the facts claimed to exist. Hence where a party claims that he has no knowledge of the particulars called

Before Answer

for he may state such lack of knowledge under oath in lieu of giving the particulars. (*Bien v. Mahoney* (Sup. Ct.), 55 L. J. 824 (June 1, 1916), Donnelly, J.)

Where an order grants unconditionally a motion for a detailed bill of particulars concerning matters as to which the party swears he has no knowledge and of which the other party necessarily has knowledge, the order should be modified upon application by providing that if the party has no present knowledge as to any of the matters which he is required to give particulars, he should so state under oath, and that such statement shall serve in place of an answer as to those matters concerning which he so makes oath. (*de Cordova v. Sanville*, 171 App. Div. 422.)

In the First Department a plaintiff cannot obtain a bill of particulars as to a defense of contributory negligence. (163 App. Div. 112.) In the Second Department in some instances the defendant will be required to furnish a bill of particulars as to the contributory negligence. (159 App. Div. 578.) In sound reasoning it should be allowed in all cases where the party injured is deceased at the time of the application.

If a bill of particulars as served is deemed defective or insufficient, the party on whom it is served should either move for a further bill of particulars or return it with a statement of the reasons specifying the defects, but should not keep it, and move for a precluding order. (114 App. Div. 112; Supreme Court, February 8, 1916, Donnelly, J.)

Where a complaint is designedly drawn to convey the least possible information as to plaintiff's cause of action and the complaint therefor is indefinite as to particulars of time and place which are material, it is better practice to move to make the complaint more definite and certain, and not to move for a bill of particulars. (156 App. Div. 381.)

Bill of Particulars Before Answer

It is dangerous practice to ask for an extension of time from the court in the moving papers for a bill of particulars before answer, since the papers in that event must contain an affidavit of merits which may prove an obstacle. (65 App. Div. 29, 74 App. Div. 380.) It has even been held that such a motion before

Demand

answer is premature and will be denied. (45 *Misc.* 201, *aff'd*, 99 *App. Div.* 620, 95 *App. Div.* 162, 104 *App. Div.* 20, 118 *App. Div.* 91, 122 *App. Div.* 608, 153 *App. Div.* 57, 156 *App. Div.* 381. But see *Ziegler v. Garvin*, 84 *App. Div.* 281.)

A motion for a bill of particulars, or in the alternative to make more definite and certain, should not be combined. (118 *App. Div.* 830.)

It is better, if possible, to obtain the extension from the court (provided your adversary makes such course necessary) only after the motion for the bill has been made.

FORM No. 173

Demand for Bill of Particulars

SUPREME COURT,
(*New York*) County.

(ALFRED D. ZEE,)	}
Plaintiff,	
against	
(CHARLES E. GAR) and another,	}
Defendants.	

Sir:

YOU WILL PLEASE TAKE NOTICE that the defendant, (*Charles E. Gar*), hereby demands that the plaintiff serve upon the undersigned a bill of particulars of the items going to make up the plaintiff's alleged claim (*together with the names of the persons whom the plaintiff alleges he procured to purchase defendants' paper and goods, and the dates, and the persons to whom such sales were made*), as alleged in the (*third*) paragraph of the plaintiff's complaint.

Dated, (*January 10, 1916*).

Yours, etc.,

(HOWARD THORN,)

Attorney for Defendant (*Charles E. Gar*),

(*41 Third Street, Newburgh, N. Y.*)

To

(SIDNEY ROSENBLUM,) Esq.,

Attorney for Plaintiff.

FORM No. 174

Demand for Bill of Particulars

SUPREME COURT,
(New York) County.

(WILLIAM STONE,)	}
Plaintiff	
against	
(MANHATTAN PRINTING COM- PANY,)	
Defendant.	

Sir:

PLEASE TAKE NOTICE, that I hereby demand that you serve upon me within ten days a (verified) bill of particulars of the plaintiff's claim for damages set forth in the complaint herein, showing:

1. *The hour and the minute of the day, as nearly as may be stated, at which the acts complained of were committed.*

2. *As nearly as may be the exact location of the linotype machine by which plaintiff was injured; in what respects the said machine was unsafe and defective in construction, and in what respects the said machine was carelessly, negligently, and unskillfully operated and maintained as alleged in the third paragraph of the complaint.*

3. *In what respects plaintiff was seriously injured, with a statement of each injury complained of, its nature, location and extent, in so far as the same has not been specifically set forth in the complaint.*

4. *An itemized statement of "the great expense" to which plaintiff was put for "medical and surgical attendance, appliances and medicines," as alleged in the fourth paragraph of the complaint.*

Demand — Negligence

5. *The number of weeks during which plaintiff "was confined to his bed," as alleged in the fourth paragraph of the complaint.*

Dated, (*New York, March 14, 1916*).

Yours, etc.,

(*JOHN J. MAXWELL,*)

Attorney for (*Defendant,*)

(*26 Liberty*) Street,

(*New York City.*)

To

(*CHARLES W. CLINTON,*) Esq.,

Attorney for (*Plaintiff,*)

(*32 Nassau Street,*)

(*New York City.*)

FORM No. 175

Demand for Bill of Particulars — Specifying Negligence

SUPREME COURT,

(*New York*) County.

(*WILLIAM THOMPSON,*)

Plaintiff,

against

(*EMPIRE STATE RAILROAD COMPANY,*)

Defendant.

Sir:

I hereby demand that you deliver to me within ten (10) days from the date of the service of this demand, a (*verified*) bill of particulars specifying (*the train on which deceased was employed when he was killed, and the other train mentioned in the complaint herein, and in what defendant's alleged negligence in operating them consist; what locomotive killed decedent; at what places the track was unsafe; what rules and regulations were insufficient, and what appliances were unsafe and in what particular; where in the city of Yonkers the said train was being operated at the*

 Notice of Motion — Services

time of his death; what appliances, rolling stock and equipments were unsafe, and in what particular as alleged in the complaint.)

Dated, (August 11, 1916).

Yours, etc.,

(FRED BOWMAN,)

Attorney for (*Defendant*,)

Office and P. O. Address,

(*No. 15 William*) Street,

(*Borough of Manhattan*,)

(*City of New York*.)

To

(WILLIAM RANDON,)

Attorney for (*Plaintiff*,)

(*No. 27 Pine Street*,)

(*New York City*.)

 FORM No. 176

Notice of Motion for Bill of Particulars — Action for Services

SUPREME COURT,
(*New York*) County.

(JOHN AIRD,)	} Plaintiff,
against	
(HIGHLAND TRACTION COM- PANY,)	
Defendant.	

Sir:

PLEASE TAKE NOTICE, that upon the annexed affidavit of (*William Sparrow*), verified the (4th) day of (*April*, 1916,) and upon the pleadings herein, the undersigned will move this court at Special Term, (*Part I*,) to be held at (*the County Court House in the Borough of Manhattan, City of New York*,) on the (15th) day of (*April*, 1916,) at the opening of court on that day, or as soon thereafter as counsel can be heard, for an order directing the plaintiff to serve on the defendant a (verified) bill of the

Notice of Motion — Services

particulars of his claim, which shall more specifically set forth the following matters, with reference to the allegations contained in paragraph (III) of the complaint herein.

1. That plaintiff state (*whether said alleged employment or retainer of the plaintiff by the defendant was in writing or oral; and state the terms thereof with time, place and circumstance of making, together with the names of the officers or other persons who, it is claimed, acted for or on behalf of defendant at the time of the alleged engagement and retainer under the terms of which the professional services referred to were rendered*).

2. That plaintiff furnish an itemized statement of (*the professional services alleged to have been rendered between February 1, 1914, and December 1, 1915, upon which the charge of \$10,000 as set forth in the complaint is based, which statement shall show the precise nature and character of the services therein set forth with the dates thereof*).

3. That plaintiff state (*the name of the officer or officers or other persons representing the defendant at whose "special instance and request" the services alleged to have been rendered were performed, if such request were in writing, and stating terms, together with time, place and circumstances of making*), and for such other and further relief as to the court may seem just in the premises.

Dated, (*New York, April 5, 1916*).

Yours, etc.,

(*STOW & BAXTER,*)

Attorneys for (*Defendant,*)

(*5 Nassau Street,*)

(*New York City.*)

To

(*JOHN OLIVER,*) Esq.,

Attorney for (*Plaintiff,*)

(*31 Nassau Street,*)

(*New York City.*)

FORM No. 177

Notice of Motion for Bill of Particulars — Action for Personal Injuries

SUPREME COURT,

(New York) County.

(WILLIAM STONE,)

Plaintiff,
against(MANHATTAN PRINTING COM-
PANY,)

Defendant.

Sir:

PLEASE TAKE NOTICE, that upon the annexed affidavit of (*Daniel Boone*), verified the (*19th*) day of (*March*, 1916), and upon all the pleadings and proceedings already had herein, and upon the demand for a verified bill of particulars heretofore served on you on the (*5th*) day of (*March*, 1916), the original of which is hereto annexed, with proof of service thereof, the undersigned will move this court, at a special term, (*Part I*) thereof, to be held at the County Court House in the (*Borough of Manhattan, City of New York*), on the (*27th*) day of (*March*, 1916), at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order directing the plaintiff to serve upon the attorneys for the defendant a verified bill of particulars, setting forth his claim for damages, and showing in detail:

1. *(*The hour and minute of the day, so nearly as may be stated, at which the acts complained of were committed.*)

2. As nearly as may be, (*the exact location of the linotype machine by which plaintiff was injured; in what respects the said machine was unsafe and defective in construction, and in what respects the said machine was negligently and carelessly maintained*) as alleged in the (*third*) paragraph of the complaint.

3. In what respects (*plaintiff "was seriously injured"*), as alleged in the (*fourth*) paragraph of the complaint, with a statement of (*each injury complained of, its nature, location and extent*), in so far as the same has not been specifically set forth therein.

* For other particular demands, see Abbott's Prac. & Forms, vol. II, p. 1400.

Notice of Motion — Negligence

4. An itemized statement of (*the "great expense" to which plaintiff was put for "medical and surgical attendance, medicines and appliances"*), as alleged in the (*fourth*) paragraph of the complaint (*and in case plaintiff's physician or physicians have not yet rendered a bill to plaintiff for medicines and services, a statement of the number of calls said physician or physicians made to plaintiff's house, and of the number of visits plaintiff paid to the office of said physician or physicians in the course of treatment of the injuries alleged in the complaint to have been sustained by reason of the negligence of the defendant, its servants and employees, and of the nature and number of surgical operations, if any, performed in the treatment of said injuries*).

5. The number of days during which the plaintiff was confined to his bed, as alleged in the (*fourth*) paragraph of the complaint, and the number of days during which plaintiff was kept away from his usual employment or occupation.

6. In what respects (*the plaintiff has been rendered less capable of performing the duties and labors required of him in his usual occupation or calling, as alleged in the fourth paragraph of the complaint*).

And further directing that until the service of such verified bill of particulars in compliance with such order, the (*plaintiff*) and his attorney be stayed from any and all proceedings, except to review or vacate the order granted upon this motion, and for such other and further relief as to the court may seem proper, together with the costs of this motion.

Dated, (*New York, March 19th, 1916*).

Yours, etc.,

(*BAYARD H. JAMES,*)

Attorney for (*Defendant,*)

Office and Post-Office Address,

(*10 Wall*) Street,

(*New York City*).

To

(*LEONARD JOHNSON,*)

Attorney for (*Plaintiff,*)

(*New York City*).

It has been held a clause may be inserted requiring party, if he has no knowledge of any of the particulars asked for, to state such lack of knowledge under oath in lieu of the particulars. (48 *Misc.* 626, 97 *App. Div.* 137, 116 *App. Div.* 892.)

Affidavit — Negligence

FORM No. 178

Affidavit to Secure — Action for Personal Injuries

SUPREME COURT,
(*New York*) County.

(<i>WILLIAM STONE,</i>)	
	Plaintiff,
against	
(<i>THE MANHATTAN PRINTING</i>	
<i>COMPANY,</i>)	
	Defendant.

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*DANIEL BOONE,*) being duly sworn, says that he is an officer of the defendant (*company*) herein, (*The Manhattan Printing Company,*) to wit: (*vice-president and treasurer,*) and that he is acquainted with all the pleadings and proceedings had in this action; that this action is brought to recover the sum of (*five thousand dollars* (\$5,000)) damages for personal injuries alleged to have been sustained by the plaintiff through the negligence of this defendant, its agents, servants and employees, on or about the (*7th*) day of (*October, 1914, at its building, No. 45 Beckman street, in the Borough of Manhattan, City of New York,*) as appears more fully set forth in the complaint herein.

That the summons and verified complaint herein were served upon the defendant on the (*21st*) day of (*December, 1914,*) and issue was joined by the service of the defendant's verified (*amended*) answer on the (*8th*) day of (*February, 1915,*) which answer (*admitted defendant's incorporation, and that it operated a newspaper and job printing establishment at the time and place mentioned in the first paragraph of the complaint,*) and alleged that it had no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs numbered (*II., III., IV. and V.*) of the complaint, and therefore denied the same.

And for a second further defense, it alleged upon information and belief that whatever damages and injuries were sustained by

Affidavit — Negligence

the plaintiff at the time and place mentioned in the complaint, were due to the negligence of the plaintiff and were not the result of any negligence on the part of this defendant or of its agents, servants or employees.

That on the (4th) day of (March, 1915), the defendant served upon the attorney for the plaintiff a demand for a verified bill of particulars setting forth the particulars asked for in the demand numbered (one to five,) inclusive, contained in the notice of motion hereto attached; that said attorney has paid no attention to the said demands and has absolutely failed to comply with them, although the time limited for him to do so has expired.

That defendant intends in good faith to defend this action.

The defendant asks for a statement of (*the hour at which the accident set forth in the complaint occurred, and also the exact location of the machine which it is alleged occasioned the injuries complained of, and for the name of the employee of this defendant in charge of said machine at the time of the accident*); that the reason why the defendant asks for the above information is that (*deponent has made a request to the foreman and employees of this defendant concerning the accident complained of, and after careful inquiry and investigation made by a representative of this defendant, and instituted by the deponent, the defendant is unable to obtain any information whatever concerning the alleged accident*). Your deponent further says to the court that by reason of the fact that (*defendant operates two hundred linotype machines, of the kind mentioned in the complaint, in its building, it is difficult to obtain a statement from its employees of the particular machine, and of the circumstances involved in the accident set forth in the complaint, if only the date thereof is within the knowledge of the defendant,*) and that if (*the exact location of the machine is given the employees in charge of the machines in that particular section of deponent's building may be more closely examined, and the alleged negligence of any of said employees may be discovered*).

* The defendant is ignorant of the nature of the injuries alleged to have been sustained by the plaintiff, for the reason that (*no physical examination of the plaintiff has been made on behalf of the defendant, and for the further reason that the allegations in the complaint setting forth the injuries alleged to have been sustained by the plaintiff are general and do not particularly set forth the said injuries,*) and defendant asks that the plaintiff be directed to

*As to necessity of alleging ignorance of matters as to which particulars are sought, see Note, p. 457.

Affidavit — Negligence

give a statement of each injury complained of, its nature, location and probable extent or duration, and a statement of which of the injuries are claimed to be permanent.

* That defendant is entirely ignorant of the ("*great expense*") to which plaintiff was put for ("*medical and surgical attendance, appliances and medicines*") as alleged in the (*fourth*) paragraph of the complaint, and as the allegation of such expenses constitute an allegation of special damages, deponent respectfully submits that the defendant is entitled to full particulars thereof.

That defendant is ignorant of the respects in which he (*linotype machine*) by which plaintiff claims to have been injured was ("*unsafe and defective in construction,*" and was "*negligently maintained and operated,*") as set forth in the (*fifth*) paragraph of the complaint.

That deponent is informed by defendant's attorney, (*Henry A. Russell,*) and verily believes that it is necessary for the defendant in order to enable it to properly prepare for the trial of this action, to obtain a statement of each and every fact asked for in the notice of this motion.

WHEREFORE, the defendant asks that an order be granted directing the attorney for the plaintiff to serve upon the attorney for the defendant within ten days after the service of the same a verified bill of particulars setting forth the facts asked for in the paragraphs (*one to five, inclusive,*) in the notice of motion hereto attached.

The defendant further asks that the order stay the plaintiff and his attorneys from any and all proceedings in this action, except to review or vacate this order, until the service of a verified bill of particulars, and for such other and further relief as to the court may seem proper.

No previous application for the relief herein sought has been made to any court or judge.

(*DANIEL BOONE.*)

Sworn to before me, this }
(16th) day of (*March,* 1915.) }

(*ARCHER PANGBORN,*)

Notary Public, (*No. 18,*)

(*New York*) County.

* As to necessity of alleging ignorance of matters as to which particulars are sought, see Note, p. 457.

Affidavit — Services

FORM No. 179

Affidavit to Secure — Action for Services

SUPREME COURT,
(*New York*) County.

(<i>JOHN AIRD</i>),	} Plaintiff,
against	
(<i>THE HIGHLAND MANUFACTURING COMPANY</i>),	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM SPARROW*), being duly sworn, says: That he is the (*secretary and treasurer*) of the defendant (*company*), and has been such since the (*20th*) day of (*May*, 1915), and is familiar with the facts and circumstances relating to the business of said (*company*) during that period, and that most of the transactions relating to the business affairs of said (*company*) during the time mentioned took place under deponent's personal observation and control; and such transactions as did not come under his personal knowledge or direction deponent is familiar with by reason of his examination of the records, correspondence and papers of the said (*company*) and by reason of consultations, and conversations with the directors and officers thereof.

That the complaint was served on the defendant on the (*2d*) day of (*March*, 1915), that the cause is at issue by the service of defendant's answer on the (*22d*) day of (*March*, 1915). (*State facts excusing delay in making motion, if any.*)

Deponent further says that he has read the complaint and the answer of the defendant, and he believes and avers that a bill of particulars setting forth the matters hereinafter specified is necessary, and that unless such bill of particulars is furnished by the plaintiff said defendant and its attorney will be unable to properly and adequately prepare for a trial of this action.

* The deponent has not, nor, as he is informed and believes, has

*As to whether allegations showing lack of knowledge of matters as to which particulars are sought, are necessary, see Note, p. 457.

Affidavit — Services

the defendant (*company*) or any of its officers any knowledge or information of (*any engagement or employment on their part of the professional services of this plaintiff*), and deponent avers, upon information and belief, that said (*company did not engage, employ or retain the plaintiff for the purpose set forth in the complaint*). That deponent has not, nor, as he is informed and believes, has any officer of the defendant (*company*) any knowledge or information as to (*the nature, character or extent of services alleged to have been performed, and which are stated to be the basis of the claim set forth in the complaint*). That the deponent has not, nor, as he is informed and believes, has any officer of the defendant (*company*) any knowledge or information as to (*a request having been made by the defendant company for the performance of such alleged services described in the complaint*), and deponent has no knowledge, and as he is informed and believes, the other officers of the defendant (*company*) have no knowledge of (*any agreement whatever to pay the plaintiff the sum of sixteen thousand dollars (\$16,000), or any sum whatever for said alleged services*).

That said defendant will be unable to properly or adequately prepare for trial of the issue as to whether (*any engagement or retainer was entered into between the said defendants and the plaintiff for any services rendered under said retainer, or at the instance and request of said defendant*), unless the particulars asked for herein in relation thereto are furnished, and unless the nature and extent of the alleged services rendered are specifically stated and the names of the officer or officers of the defendant company alleged to have authorized the performance of the same, and to have agreed in behalf of the defendant (*company*) to the payment therefor are furnished.

Deponent, therefore, asks that the plaintiff shall be required to furnish to the defendant the following particulars and to specify therein the following matters, to wit:

1. That the plaintiff state (*whether said alleged "engagement, employment and retainer" of the plaintiff by the defendant, the Highland Manufacturing Company, was in writing or oral; if in writing, attach a copy thereof; if oral, state the terms thereof, the time and place and the circumstances of making, with the names of the officers or other persons who plaintiff claims acted for or in behalf of the defendant at the time of such alleged engagement or*

Affidavit—Services

retainer, under the terms of which this alleged professional service referred to was rendered).

2. That plaintiff furnish an itemized statement of *(the professional services alleged to have been rendered between March 1, 1911, and December 31, 1914, upon which said charge of sixteen thousand dollars (\$16,000) is based)*, which statement shall show the precise nature and character of the service therein set forth with the dates of the rendering thereof.

3. That the plaintiff state *(the name of the officer or officers or other persons representing the defendant at whose "special instance and request" the services alleged to have been rendered between March 1, 1911, and December 31, 1914, were performed, and whether said request was in writing, and if oral, state the terms and time and place and circumstances of making)*.

4. That the plaintiff state *(the name of the officer or officers or other person representing the defendant, who, it is alleged, have agreed to pay the plaintiff for the professional services alleged to have been rendered between those dates)*.

On information and belief that on the (22d) day of (March, 1915), a demand was made upon the plaintiff's attorney for the bill of particulars specified in the demands numbered 1 to 4 of the notice of motion hereto annexed, and that plaintiff has failed to comply with such demand as appears by the affidavit of (George Morgan) thereto annexed.

(WILLIAM SPARROW.)

Sworn to before me, this }
(4th) day of (April, 1915.) }

(ANNA R. KEMP,)

Notary Public,

(New York) County.

Order

FORM No. 180

Order Directing Service of Bill of Particulars

At a Special Term of the Supreme Court, (*Part I.*,) held in and for the County of (*New York*,) at the County Court House, in (*the Borough of Manhattan, City of New York*,) on the (*18th*) day of (*March*, 1915).

PRESENT:

Hon. (*LEONARD A. GIEGERICH*),
Justice.

(<i>WILLIAM STONE</i>,) Plaintiff, against (<i>MANHATTAN PRINTING COM- PANY</i>,) Defendant.	}
---	---

A motion having been made by the defendant herein for an order directing the plaintiff to serve upon the defendant a verified bill of particulars, setting forth the damages alleged in the complaint, and showing in detail:

(Insert particulars demanded.)

And the same having regularly come on to be heard,

Now, upon reading and filing the said notice of motion, and the affidavit of (*Daniel Boone*,) verified the (*16th*) day of (*March*, 1915,) in support of said motion, and upon reading and filing the affidavit of (*Leonard Johnson*,) verified the (*17th*) day of (*March*, 1915,) in opposition thereto; upon reading the pleadings and upon all the proceedings already had, and upon the demand for a verified bill of particulars heretofore served upon the plaintiff herein; and after hearing Mr. (*Bayard H. James*,) of counsel for (*defendant*,) in support of said motion, and Mr. (*Leonard Johnson*,) of counsel for (*plaintiff*,) in opposition thereto, and due deliberation having been had; on motion of (*Henry A. Russel*,) attorney for (*defendant*,) it is

Goods Sold

ORDERED that the said motion be, and the same hereby is, in all respects granted, except * * * (*insert any modifications imposed by the court*) * * *, and it is further

ORDERED that the (*plaintiff*) within (*twenty*) (20) days after the service upon his attorney of a copy of this order serve upon the defendant a verified bill of particulars setting forth the facts asked for in paragraphs numbered ("two" to "five," inclusive, of the notice of this motion.

Enter,

(*L. A. G.*)

J. S. C.

FORM No. 181

Bill of Particulars — Goods Sold

SUPREME COURT

(*New York County*).

(*WILLIAM THOMPSON*),

Plaintiff,

against

(*FREDERICK SMITH*),

Defendant.

Plaintiff herein by his attorney, (*William Reilly*), for a bill of particulars of his complaint herein, alleges:

I. That the account stated as set forth in the first cause of action in said complaint, took place between defendant and plaintiff's agent, (*Lester Jones*), on or about the said (*15th*) day of (*May*, 1914,) at which time a bill for (*cigars*), sold defendant by plaintiff prior to the said date, amounting to (\$100.00) was rendered to defendant, and who thereupon paid (\$25.00) on account of the same.

II. That the items amounting to (\$100.00,) and set forth in (*paragraph IV. of the second cause of action in*) the complaint

 Goods Sold

herein are for (*cigars*) sold and delivered by plaintiff to defendant on the following days, in the following amounts and agreed prices:

<i>Date</i>	<i>Amounts</i>	<i>Prices</i>
(November 18, 1913), (1 Package, 500 cigars)....		(\$25 00)
(December 12, 1913), (1 " " " ")....		(25 00)
(" 29, 1913), (1 " " " ")....		(25 00)
(January 12, 1914), (1 " " " ")....		(25 00)
Total		(\$100 00)

. Dated, (*May 29th*, 1914.)

Yours, etc.,

(*WILLIAM REILLY*.)

Attorney for Plaintiff,
Office and Post Office Address,
(*No. 27 Pine Street,*)
(*New York City.*)

To

(*EZRA WILLIAMS*.) Esq.,
Attorney for Defendant,
(*No. 15 William Street,*)
(*Borough of Manhattan,*)
(*City of New York.*)
(Verification.)

Notice of Motion

FORM No. 182

Notice of Motion to Preclude Evidence Upon Trial*

SUPREME COURT,
(*New York*) County.

(<i>LOTTIE SHAW</i> ,)	}
against	
(<i>CATHERINE OLNLY</i> and <i>HARRY</i>	
<i>OLNY</i> ,)	
Defendants.	

Sir:

PLEASE TAKE NOTICE, that upon the annexed affidavit of (*Robert Meadows*,) duly verified the (14th) day of (*July*, 1916,) and upon the order entered herein on the (31st) day of (*May*, 1916,) granting defendants' motion for bill of particulars, and the due proof of due service of a copy with notice of entry thereof, heretofore filed herein, and upon all the papers on file in this action, the undersigned will move this court at Special Term, (*Part I*) thereof, to be held at the County Court House, in (*the Borough of Manhattan, City, County*) and State of New York, on the (21st) day of (*July*, 1916,) at the opening of court, on that day, or as soon thereafter as counsel can be heard, for an order precluding plaintiff from giving any evidence in support of the allegations or matters set forth in the complaint, of which particulars have not been furnished or served as required by said order, and for such other or further relief as to the Court may seem just and proper, together with the costs of this motion.

Dated, (*Brooklyn, New York, July 15, 1916.*)

Yours, etc.,

(*ROBERT MEADOWS*,)

Attorney for Defendants,

(861 *Broadway*,)

To

(*JULIUS HANSEN*,)

(*Brooklyn, N. Y.*)

Attorney for Plaintiff.

* (138 *App. Div.* 788, 163 *App. Div.* 943, 167 *App. Div.* 444.) When such an application is made, the party who has failed to furnish particulars may move to have his default opened and ask leave to serve his bill of particulars. (139 *N. Y. Supp.* 317.) As to power of the Court, see *Gross v. Clark*, 87 *N. Y.* 272. (Apparently overlooked in *Mason v. Clark*, 75 *App. Div.* 460. See also 104 *App. Div.* 20; 56 *Misc.* 434.)

FORM No. 183

Affidavit on Motion to Preclude Evidence on Trial

SUPREME COURT,
(*New York*) County.

(*LOTTIE SHAW*),

Plaintiff,

against

(*CATHERINE OLN**Y*) and (*HARRY*
*OLN**Y*),

Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*ROBERT MEADOWS*), being duly sworn, deposes and says: I am the attorney for the defendants herein. This affidavit is based upon information and belief, the source of which is the papers on file in this action and the records and report with reference to the same kept in the offices of the attorney for the defendants herein. This action is brought to recover damages for (*injury to plaintiff caused by the alleged negligence of the defendants*).

After joinder of issue and on the (27th) day of (*October*, 1915,) a demand for a Bill of Particulars was served upon the plaintiff's attorney. The demand was not complied with, and the defendants moved this Court at Special Term for an order directing the plaintiff to serve the said Bill of Particulars, which motion was duly granted and the order signed and entered on the (31st) day of (*May*, 1916,) a copy of the said order with notice of entry thereof was served on (*Julius Hansen*), Esq., plaintiff's attorney, on the (3d) day of (*June*, 1916,) as appears by his written admission of service already on file with the papers in this action, (or hereto annexed). By the terms of said order the Bill of Particulars should have been served on the defendants' attorney on the (13th) day of (*June*, 1916,) but no Bill of Particulars has been served upon or received by the attorney for the defendants and said (*Julius Hansen*), attorney for the plaintiff, has wholly failed to comply with the terms of said order, and more than (*ten*)

Affidavit on Motion

days have elapsed since the service of said order and notice of entry, and he is now in default of service thereof.

Deponent therefore asks for an order precluding plaintiff from giving any evidence in support of the allegations and matters set forth in the complaint of which particulars have not been furnished or served as required by the said order.

No other or similar application has been made to any court or judge for the order herein sought.

(*ROBERT MEADOWS.*)

Sworn to before me, this }
(14th) day of (*July*, 1916.) }

(*JOHN JAY.*)

Notary Public,

(*Kings*) County.

DEPOSITIONS

Where, upon a motion for a commission to examine a non-resident witness, the allegations of the moving affidavits concerning the residence of the witness and his absence from this State are upon information and belief, the sources of such information and the grounds of such belief must be stated, and the reasons given why the affidavit of a person having personal knowledge of the matter is not produced; and, if the affidavit is made by the attorney for the moving party, the reason must be given why such affidavit was not made by the party himself.

FORM No. 184

Notice of Motion for Commission Upon Interrogatories

SUPREME COURT,
(*New York*) County.

(<i>THOMAS LAWSON</i> ,)	}
Plaintiff,	
against	
(<i>WILLIAM WILSON</i> ,)	
Defendant.	

Sirs:

PLEASE TAKE NOTICE that upon the annexed affidavit of (*Theodore Tilden*,) verified the (17th) day of (*March*, 1915,) and on the pleadings and all proceedings had herein, a motion will be made at Special Term, (*Part I*) of the Supreme Court, to be held at the County Court House in (*the Borough of Manhattan, City of New York*,) on the (22^d) day of (*March*, 1915,) at (10:30) A. M., or as soon thereafter as counsel can be heard, that a commission issue in this action directed to (*Ballard Young*) of the City of (*Chicago*,) State of (*Illinois*,) or to some other competent person to be therein named to examine under oath on interrogatories thereto to be annexed, in which the defendant shall be at liberty to join (*William Ransom*) of the City of

Affidavit on Application

(*Chicago,*) State of (*Illinois,*) a witness on behalf of the plaintiff, and that the trial of this action be stayed until the return of said commission, and for such other and further relief as to the Court may seem proper.

Dated, (*New York, March 17, 1915.*)

(*TILDEN & JAMES,*)

Attorneys for (*Plaintiff,*)

19 Liberty Street,

(*Borough of Manhattan,*)

(*City of New York.*)

To

(*CARRUTH & HENDERSON,*)

Attorneys for Defendant,

(*15 William Street,*)

(*New York City.*)

FORM No. 185

Affidavit on Application for Commission to Take Deposition on Interrogatories

SUPREME COURT,
(*New York*) County.

(*THOMAS LAWSON,*)

Plaintiff,

against

(*WILLIAM WILSON,*)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*THEODORE TILDEN,*) being duly sworn, says:

That he is one of the attorneys for the plaintiff herein.

That this action is brought (to recover damages for personal injuries received by the plaintiff by reason of the negligence of the defendant and his agents), and issue was joined herein on the (10th) day of (*March, 1914*), by the service of the defendant's answer to the (*amended*) complaint.

[State status of case e. g. at issue; on calendar, &c.]

Affidavit on Application

That (*William Ransom*), who resides at No. (758 *Drexel Boulevard*), in the (*City of Chicago*), in the State of (*Illinois*), is as deponent verily believes, a necessary and material witness upon the trial of this action on the question of (*the nature and extent of the injuries received by the plaintiff and the time during which he was confined to his bed and receiving medical and surgical treatment*), because (*said Ransom was the only physician who attended the plaintiff at the time he received said injuries, and who examined and treated him for said injuries*), and without his testimony it will be impossible to prove (*the nature and extent of said injuries and their permanent effect on the physical condition of the plaintiff*).

That, as deponent is informed and believes, the said (*William Ransom*) is not within the State of New York, but is in (*the City of Chicago*), in the State of (*Illinois*), and is (*a practicing physician in that city*), and cannot therefore be produced as a witness upon the trial of this action. The sources of deponent's information and the grounds of his belief are as follows: Deponent has (*corresponded with said Ransom, and has received several letters written by him, dated at 758 Drexel Boulevard, Chicago, Illinois, inclosed in envelopes post-marked Chicago, Illinois, copies of which are hereto attached, in which letters said Ransom states that he has leased a house at 758 Drexel Boulevard in that city, where he is engaged in the practice of medicine, and that he intends to make his permanent residence in said city*).

That defendant resides at (*the Hotel Majestic, in the Borough of Manhattan, City of New York*), and his attorneys in this action are (*Carruth & Henderson*), Esqs., whose office is at (*15 William street, in the Borough of Manhattan, City of New York*).

No previous application for this or any similar relief has been made.

(THEODORE TILDEN.)

Sworn to before me, this }
(17th) day of (*March*, 1915). }

(PATRICK KEENAN,)

Notary Public,

(*New York*) County.

Order for Commission

FORM No. 186

Order for Issuance of Commission

At a Special Term, (*Part I*), of the Supreme Court of the State of New York, held in and for the County of (*New York*), at the County Court House, in (*the Borough of Manhattan, City of New York*), on the (*28th*) day of (*March, 1915*).

PRESENT:

Hon. (*LEONARD A. GIEGERICH*),

Justice.

(*THOMAS LAWSON*),

Plaintiff,

against

(*WILLIAM WILSON*),

Defendant.

On reading and filing the affidavit of (*Theodore Tilden*), verified the (*17th*) day of (*March, 1915*), and the notice of motion for a commission to take the deposition of (*William Ransom*) herein on written interrogatories, with proof of due and timely service of each upon the attorneys for the defendant, after hearing (*Henry James*), Esq., on behalf of said motion, and no one appearing in opposition thereto, and after due deliberation, now, on motion of (*Tilden & James*), attorneys for (*plaintiff*), it is

ORDERED that a commission issue in this action directed to (*Ballard Young*) of (*the City of Chicago, Illinois*), to examine under oath on interrogatories to be thereto annexed (*William Ransom of said City of Chicago*), a witness on behalf of the plaintiff, and that the defendant be at liberty to join in said commission; and it is further

ORDERED that ten dollars costs of this motion abide the event of the action.

Enter:

(*L. A. G.*)

J. S. C.

Costs of commission, at discretion of Court, must be provided for in order.

Proposed Interrogatories

FORM No. 187

Endorsement Upon Proposed Interrogatories

SUPREME COURT,
(*New York*) County.

(*THOMAS LAWSON*,)
Plaintiff,

vs.

(*WILLIAM WILSON*,)
Defendant.

PLEASE TAKE NOTICE that annexed hereto are the interrogatories to be addressed to (*William Ransom*,) a witness on behalf of the (*plaintiff*) and to be annexed to the commission allowed herein by and order of this court made and entered on the (*28th*) day of (*March*, 1915.)

Dated, (*New York, March 30th*, 1915.)

Yours, etc.,

(*TILDEN & JAMES*,)

Attorneys for (*Plaintiff*,)

(*19 Liberty Street*,)

(*City of New York*.)

To

(*CARRUTH & HENDERSON*,)

Attorneys for (*Defendant*,)

(*15 William Street*,)

(*New York City*.)

Proposed Interrogatories

FORM No. 188

Form of Interrogatories

SUPREME COURT,
(*New York*) County.

(<i>THOMAS LAWSON,</i>)	}
Plaintiff,	
against	
(<i>WILLIAM WILSON,</i>)	
Defendant.	}

Interrogatories to be administered to (*William Ransom,*) of (*Chicago, Illinois,*) to be examined under the annexed commission on behalf of the (*plaintiff*):

1. What is your name, age, occupation or profession, and place of residence?

2. How long have you been engaged in such occupation or profession? (Add question showing experience as a physician and surgeon).

3. Did you (*treat Thomas Lawson, the plaintiff in this action, for injuries received by him on or about January 2, 1913? If so describe said injuries and said Lawson's physical condition when you were called to attend him.*)

4. State in a general way (*how long your treatment of said Lawson continued, and in what your treatment consisted, how long he was confined to his bed by reason of said injuries, and what permanent injuries, if any, he received at that time. If said injuries have produced any effect that is permanent or likely to become permanent on the physical condition of said Lawson, describe the same fully.*)

5. What is the reasonable value (*of the services rendered by you in the treatment of said Lawson for said injuries*)?

6. Do you know of anything concerning the matters in question that may tend to the benefit and advantage of the (*plaintiff*)? If you do, state the same fully and at length, as if you had been particularly interrogated concerning the same.

(*TILDEN & JAMES,*)

Attorney for (*Plaintiff,*)

(*19 Liberty*) Street,
(*Borough of Manhattan,*
City of New York.)

Settlement of Interrogatories — Notice

FORM No. 189

Notice of Settlement of Interrogatories*

SUPREME COURT,
(*New York*) County.

(<i>THOMAS LAWSON,</i>)	} Plaintiff,
against	
(<i>WILLIAM WILSON,</i>)	} Defendant.

Sirs:

PLEASE TAKE NOTICE that the proposed interrogatories and (cross-interrogatories) to be addressed to (*William Ransom*) of the City of (*Chicago,*) State of (*Illinois,*) a witness in behalf of the (*plaintiff,*) to be annexed to the commission allowed by order of this court, made and entered on the (*28th*) day of (*March, 1915,*) will be presented to Honorable (*Edward R. Finch,*) a Justice of this Court, at his Chambers in the County Court House in the (*Borough of Manhattan, City of New York,*) on the (*12th*) day of (*April, 1915,*) for settlement.

Dated, (*New York, April 6, 1915.*)

Yours, etc.,

(*TILDEN & JAMES,*)

Attorneys for Plaintiff,

(*19 Liberty Street,*)

(*New York City.*)

To

(*CARRUTH & HENDERSON,*)

Attorneys for Defendant,

(*15 William Street,*)

(*New York City.*)

* Should be served two days after cross-interrogatories have been served before the time to serve same has expired and the day for which the interrogatories are noticed for settlement should not be less than two nor more than ten days later than the notice of settlement. If neither party serves a notice of settlement within the time limited therefor, the interrogatories and cross-interrogatories will be deemed settled as served and will be so allowed without notice.

Commission

The interrogatories are usually settled by an indorsement on the back initialed by the judge as follows:

"The within interrogatories and cross-interrogatories are hereby allowed and ordered annexed to the commission."

FORM No. 190

Commission to Take Testimony

THE PEOPLE OF THE STATE OF NEW YORK:

To (*Ballard Young*), Esq.,
(*Auditorium Building*),
(*Chicago, Illinois*):

KNOW YE, that we, with full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize you to examine (*William Ransom*), of (*the city of Chicago, State of Illinois*), as witness in an action pending in the *Supreme Court* of the State of New York, (*New York*) County in which (*Thomas Lawson*) is plaintiff and (*William Wilson*) is defendant on the part of the (*plaintiff*) on oath, upon the interrogatories annexed to this commission, and to take and certify the depositions of the witness and return the same and the commission according to the directions given in or with the commission, and hereunto annexed.

The commission when executed is to be returned to the clerk of the *Supreme Court*, of the State of New York, County of (*New York*), at his office in (*the Borough of Manhattan, City of New York*).

WITNESS, Honorable (*Leonard A. Giegerich*), one of the justices of said court, at (*the City of New York*), the (*18th*) day of (*April*), one thousand nine hundred and (*fifteen*).

..... Clerk.

Here must follow §§ 901 and 902 of the Code of Civil Procedure containing directions for the execution of the Commission. Additional instructions to the Commissioner should also be appended. Printed blanks containing these directions and instructions are always used for this purpose.

Consent to Commission

FORM No. 191

Consent to Issue Commission — Interrogatories Framed in Foreign
LanguageSUPREME COURT,
(*New York*) County.

(*EUGENE W. MENDEL and
EMANUEL V. BENDER,*
copartners, doing business in the
name of *MENDEL & COM-
PANY,*)

Plaintiffs,

against

(*CARL CARLSON,*)Defendant.

IT IS HEREBY STIPULATED AND AGREED that the testimony of (*Carl Carlson, and of Adam Adamson and Robert Robertson,*) witnesses for the (*defendant,*) all of whom reside at (*Mannheim, Germany,*) may be taken before the (*United States Consul at Mannheim, Germany,*) upon certain interrogatories and cross-interrogatories proposed respectively by the (*defendant and plaintiffs,*) and settled by consent of the parties.

It is further stipulated that the said testimony may be taken by the said (*United States Consul*) at such time and place as he may appoint upon notice (*only to the witnesses,*) and the questions contained in such interrogatories and cross-interrogatories and the answers of the witnesses thereto, may be taken down either in writing by the said (*Consul or by some one whom he may appoint for that purpose, or may be taken down in shorthand in the presence of the said Consul by a stenographer and may be transcribed from the stenographic notes so taken and a typewritten copy made thereof*).

It is further stipulated and agreed that the said (*United States Consul at Mannheim*) may administer the oath to the said witnesses and may take and certify the depositions of the said witnesses and may return the said deposition by (*mail*) to the Clerk of (*the Supreme Court, County Court House, Borough of Manhattan, New York City*).

Consent to Commission

It is further stipulated that all the objections to the questions contained in the said interrogatories and cross-interrogatories or the answers thereto shall be made only at the time of the trial of the above action, but no objection shall be made to the manner of the issuance of the commission or the return thereof.

It is further stipulated that the annexed interrogatories are settled as between the parties hereto and that an order settling the same as well as an order authorizing the taking of the said depositions may be entered by either of the parties hereto upon this stipulation without notice.

It is further stipulated that the interrogatories and cross-interrogatories hereto annexed together with the order authorizing the taking of these depositions or copies thereof may be sent by mail to the said (*United States Consul at Mannheim, Germany,*) by the attorney for the (*defendant,*) and may be returned by the said (*United States Consul at Mannheim, Germany,*) by (*mail*) to the Clerk of the (*Supreme Court, County Court House, Borough of Manhattan, New York City*).

It is further stipulated that the interrogatories and cross-interrogatories to be put to (*Adam Adamson and Robert Robertson*) may be framed (*in both the English and Swedish languages; that only the interrogatories framed in the Swedish language be put to the said witnesses, Adam Adamson, and Robert Robertson, and that their answers be taken and the certificates be made out in the same languages*).

It is further stipulated that the (*defendant, Carl Carlson,*) shall pay any expenses to which the (*plaintiffs*) may be put to in procuring the cross-interrogatories addressed to the said witnesses in their behalf to be translated and any additional expense of interpretation or translation made necessary by the fact that the interrogatories to these said witnesses are framed and answered in the Swedish language.

Dated, (*New York, March 3, 1915.*)

(*WARNER RODMAN,*)

Attorneys for (*plaintiffs,*)

(*FREDERIC H. COWSON,*)

Attorney for (*defendant.*)

Affidavit on Application

FORM No. 192

Affidavit on Application for Commission

SUPREME COURT,
(*New York*) County.

(*EUGENE W. MENDEL* and
EMANUEL V. BENDEL,
copartners, doing business in the
name of *MENDEL & COM-
PANY*,)

Plaintiffs,

against

(*CARL CARLSON*,)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*FREDERIC H. COWSON*,) being duly sworn, says, that he is attorney in the above action for (*Carl Carlson*,) the above named (*defendant*.)

That the above entitled action is brought to recover damages in the sum of (\$6,650) for (*the alleged breach of three contracts for the sale of merchandise*;) that this action was begun by the service of a summons and complaint on the (*defendant*) on (*February 17, 1914*.) Defendant's answer was served on (*April 11, 1914*,) and plaintiffs served a reply to defendant's counterclaim contained therein on (*April 20, 1914*,) whereupon the action became at issue. It was noticed for trial for the (*May*) Term (1914,) and appeared on the (*Call Calendar for February, 1915, and plaintiffs' attorneys served notice on deponent that the case would be placed on the Calendar of Causes ready for trial. Deponent opposed the placing of the cause on the February "Ready" Calendar*) as deponent desired to take (*defendant's*) deposition and the case was, at deponent's request, placed on the (*March "Ready"*) Calendar where it now stands awaiting trial.

That deponent desires to take the testimony of (*the defendant, Carl Carlson*,) and of (*two of his employees, to wit: Adam*

Affidavit on Application

Adamson and Robert Robertson,) upon written interrogatories to be addressed to the said witnesses; upon information and belief, that the said witnesses are subjects of (*Germany*) and are all without the State of New York and reside at (*Mannheim, Germany.*) where (*the defendant's mills are located;*) that because of (*the European war it will be impossible for the said witnesses to attend upon the trial of this action;*) that the testimony of the said witnesses is material and necessary for (*the defense*) of the above entitled action, and the (*defendant*) cannot safely proceed to trial without this testimony, as the (*defendant, Carl Carlson.* had conferences at *Bad Nauheim and Mannheim, Germany, and in the City of New York with Emanuel V. Bender, one of the plaintiffs, concerning the contracts for breach of which this action is brought by the plaintiffs;*) that deponent is informed by the (*defendant*) and verily believes that the witnesses (*Adam Adamson and Robert Robertson* were present at one or more conversations between the said *Carl Carlson and the said Emanuel V. Bender, which took place in the defendant's factory at Mannheim, Germany, and that the defendant Carl Carlson was the only person present who could testify for the defendant as to one or more conversations which took place in New York in the early part of 1914.*

Deponent expects to show that (*at the conversations at Mannheim, Germany, the plaintiffs cancelled one of the contracts for which damage is now sought,*) and that (*in the subsequent conversations had in New York, extensions of time to deliver the said goods were granted by the plaintiffs to the defendant.*

That the source of deponent's information and the grounds for his belief, as to the fact that the said witnesses are without the State of New York and as to the nature and materiality of the testimony of the said witnesses are communications made by the (*defendant*).

That this affidavit is made by deponent and not by the defendant because the defendant is at (*Mannheim, Germany;*) that deponent expected the said (*defendant*) to be present at the trial of this action but has been advised (*within the last two weeks*) that because of (*the war*) the (*defendant*) will be unable to attend such trial, and deponent is unable to secure (*defendant's*) affidavit in time to have the deposition taken and returned prior to the time when this case will be reached for trial.

Affidavit on Application

Deponent further says that he is the attorney retained by the defendant to defend this action and has an office at (32 Nassau Street, Borough of Manhattan, City of New York); and that defendant has fully and fairly stated the facts of the case to deponent and that, after such statement, deponent verily believes and has so advised defendant that he has a good and substantial defense upon the merits to the cause of action set forth in the complaint; and that defendant intends to defend this action in good faith.

(That the consent of the plaintiff's attorneys to an order authorizing the direction of a commission appears upon the said order hereto annexed.) That the testimony of the above named witnesses will be used by deponent upon the trial of the above action.

That no previous application has been made for the relief hereby sought.

WHEREFORE, deponent asks that an order be made directing that a commission issue to (*William C. Tiedeman, the American Consul at Mannheim, Germany, a person agreed upon by the parties hereto,*) to take the testimony of the said (*Carl Carlson, Adam Adamson and Robert Robertson,*) under oath, at (*Mannheim, Germany,*) and to certify the depositions of the said witnesses and to return the same pursuant to the directions to be contained in the commission, and for such other and further relief as may be proper in the circumstances.

(FREDERICK H. COWSON.)

Sworn to before me, this }
(3rd) day of (March, 1915.) }

(JOSEPH MASTEN,)

Notary Public,

(New York) County, No. (76).

Order for Open Commission—Surrogate

FORM No. 193

Order for an Open Commission (Upon Consent)

At a Surrogate's Court held in and for the County
of New York, at the (*Hall of Records*) in the
(*Borough of Manhattan, City of New York,*)
on the (*18th*) day of (*March, 1913.*)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER,*)

Surrogate.

In the Matter of (<i>Proving the last Will and Testament</i>) of (<i>JOHN C. MARVIN,</i>) Deceased.	}
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ON READING AND FILING the affidavit of (*Daniel Winn,*) verified (*March 5, 1913,*) whereby it is made to appear to the satisfaction of the Surrogate that the said applicant is a party to this proceeding; that he has filed (*an answer contesting probate*) and that issues of fact are raised by the pleadings to be tried in this Court; that the testimony of certain persons as witnesses upon the trial of said issues is material and necessary to said applicant and that said persons are material and necessary witnesses to support the issues presented by (*his said answer;*) that said persons are not within this State and are not residents of this State but reside at (*Manchester, Vermont; Boston, Mass.; Providence, R. I., and Paterson, N. J.;*) that none of the parties to this proceeding is an infant or the committee of a person judicially declared to be incapable of managing his affairs for any reason; that the citation herein was returnable on (*October 30, 1912,*) and that notice of application for this order has been waived by each party to the proceeding who has appeared thereon.

On motion of (*Graham & Lambert, Parsons & Parsons, Frederick W. Garfield and James Meyers,*) attorneys for (*the contestants,*) and no one opposing,

ORDERED, that an open commission issue in this proceeding directed to (*Edward Wilson,*) a person mutually agreed upon by the parties, authorizing him to examine on oath any witness who

Order for Open Commission — Surrogate

may be produced before him without the State of New York but in the United States by any party on or before the (20th) day of (*April*, 1913,) upon oral questions to be put to such witnesses when produced, to take and certify the deposition of each witness so examined and to return the same, and the commission, immediately after the expiration of the time limited for the production of witnesses, according to the directions given in said commission, but the said (*applicant*) shall not be so examined in his own behalf except by consent of the parties. And it appearing that said commissioner is a duly qualified stenographer he is directed to take such depositions by questions and answers, word for word, and to that end may take the testimony of witnesses in shorthand and transcribe or print his notes. That said commission with the depositions taken thereunder and a certified copy of this order annexed, shall be returned (*in person*) by said commissioner to the Clerk of the (*Surrogate's*) Court at (*New York City, N. Y.*)

FURTHER ORDERED that (*five*) days' written notice of the time and place of taking depositions under said commission, specifying the names of witnesses to be examined and the person before whom the depositions will be taken, be served unless such notice be waived as to any witness and if waived the deposition of such witness may be so taken without notice given; and, all consenting thereto it is

FURTHER ORDERED that all objections to the competency or credibility of the witnesses so to be examined or to the relevancy or substantial competency of questions put to or answers given by such witnesses shall be made at the time of taking such depositions and shall be noted on the face of the depositions; and unless so done such objections shall be deemed to have been waived.

(*ROBERT LUDLOW FOWLER,*)

Surrogate.

Commission by Consent — Order

Notice of application for the foregoing order is waived and the appointment of (*Edward A. Wilson*) as commissioner is agreed to, and the making of the foregoing order is hereby consented to.

(*FREDERICK H. COWPEN*,)
 Attorney for (*JOHN H. BARRETT*,)
 (*Proponent*,)
 (*ALLEN & SLATER*,)
 Attorneys for (*Fidelity Trust Co.*,)
 (*Legatee*.)
 (*JAMES MEYERS*,)
 Attorney for (*E. E. MARVIN et al*,)
 (*Contestants*.)

FORM No. 194

Order for Commission on Consent — Interrogatories in Foreign Language

At a Special Term of the Supreme Court, Part (*II*) thereof, held in and for the County of (*New York*) at the County Court House in (*the Borough of Manhattan, City of New York*) on the (*5th*) day of (*March, 1915*.)

PRESENT:

Hon. (*DANIEL F. COHALAN*,)
 Justice.

(*EUGENE MENDEL and EMANUEL BENDER*, co-partners, doing business in the name of *MENDEL & COMPANY*,)

Plaintiffs,

against

(*CARL CARLSON*,)

Defendant.

On reading and filing the affidavit of (*Frederick H. Cowson*,) verified (*March 3, 1915*,) and the stipulation of the attorney for the (*plaintiffs*) to the above-entitled action, dated (*March 3, 1916*,) and it appearing that the foregoing action is pending in

Commission by Consent — Order

this Court and that an issue of fact has been joined therein; and that the testimony of the (*defendant, Carl Carlson,*) and of (*Adam Adamson and Robert Robertson,*) witnesses for the (*defendant,*) is material to the defense of the said action, and that the said witnesses are not within the State of New York and are at (*Stockholm, Sweden,*) and the parties hereto having consented by the stipulation above mentioned, to the taking of the deposition of the said defendant upon written interrogatories and cross-interrogatories to be annexed to the commission, it is, pursuant to the said stipulation and on motion of (*Frederick H. Cowson,*) attorney for the said (*defendant,*) hereby

ORDERED, that a commission issue in this action directed to (*Ernest L. Harris,*) United States Consul at (*Stockholm, Sweden,*) a person mutually agreed upon by the parties hereto to examine under oath upon interrogatories to be annexed thereto, (*Carl Carlson, Adam Adamson and Robert Robertson,*) all of (*Stockholm, Sweden,*) witnesses on behalf of the (*defendant,*) and to take and certify the depositions of the said witnesses so examined and to return the same with the commission and a certified copy of this order annexed, pursuant to the directions contained in the said commission, (*and it is further,*

ORDERED, that the interrogatories and cross-interrogatories to be put to the said witnesses, Adam Adamson and Robert Robertson, be framed in the English and also in the Swedish language; that only the interrogatories framed in the Swedish language be put to the witnesses, and that their answers be taken and the certificates thereto be made out in the same language; that Carl Carlson, the defendant herein, pay to the plaintiffs the sum of ten dollars (\$10.00) for the plaintiffs' expenses in procuring the cross-interrogatories on plaintiffs' behalf to be translated.)

Enter,

(D. P. C.)

J. S. C.

The parties hereby consent to the signing and entry of the foregoing order.

(*New York, March 3, 1915.*)

(WARREN & RODMAN,)

Attorneys for (*Plaintiffs.*)

(FREDERICK L. CAWSON,)

Attorney for (*Defendant.*)

EXAMINATION BEFORE TRIAL

(After Action Commenced)

The affidavit should be made by the party and on personal knowledge.

But, when on information and belief, state:

- (a) Grounds of belief.
- (b) Sources of information.

(149 *App. Div.* 108.)

It is very dangerous to have affidavit made by anyone but party. As to when other than party can make affidavit, see 74 *App. Div.* 404, and 87 *App. Div.* 425, 1 *Current Ct. Dec.* 144 (1908), 122 *App. Div.* 795.

These points should be covered:

- (1) Title and venue.
- (2) Full name of affiant.
- (3) Relation to cause.
- (4) Residence and business address (street and number) of affiant.
- (5) Full names and residence (street and number) of all the parties to the action. (166 *App. Div.* 942.)
- (6) All appearances.
- (7) Full names and office and post-office addresses (street and number) of any attorney who has appeared for any party and for whom he appears.
- (8) That this action was commenced by service of summons and complaint on defendant personally, giving date.
- (9) Issue joined by service of what pleading and date of such service. (167 *App. Div.* 896, 168 *App. Div.* 826.)

Note of issue filed and noticed for trial, and now on calendar.

Its Calendar Number and Index Number and year.

- (10) Nature of action in great detail, and substance of judgment demanded. (91 *Misc.* 493.)
- (11) Refer to annexation of copies of pleadings and make them part of the affidavit.
- (12) Nature of the defense (interposed) to action. (152 *N. Y. Supp.* 192.)
- (13) Name and residence (street and number) of the person sought to be examined.

What Affidavit Should Show

- (14) Allegations showing lack of exact information which is material and necessary to prepare for trial, *e. g.*, *plaintiff* is ignorant of what opponent claims as to whether (*Jones and Smith*) acted upon instructions, but is informed and believes.
- (15) That deponent expects and desires to prove the above facts in detail by the testimony of party sought to be examined. (154 *App. Div.* 651, 132 *N. Y. Supp.* 303.)
- (16) *Facts* in detail which show what testimony is desired, and expected, that person will give. (87 *Misc.* 445, 130 *App. Div.* 134.)
- (17) That deponent has fully and fairly stated the case in this action, and what deponent expects to prove as aforesaid at the examination of the said (*Jones*), to the said (*William Buell*), who is one of the counsel for the (*plaintiff*) in this action, and who has an office at (120 Broadway, in the Borough of Manhattan, City of New York,) and that he is advised by said counsel after such statement, so made, and verily believes that the examination of said (*defendant*) is indispensably material and necessary to this deponent, this (*plaintiff*), for the prosecution of this action, and that (*plaintiff*) cannot safely proceed to trial without such examination of said (*defendant*) and set forth facts showing that it is material and necessary. (124 *App.* 654, 137 *App. Div.* 823, *Rule* 82, *G. R. P.*)
- (18) Facts to show that the testimony must necessarily be taken before rather than at the trial (although perhaps this is no longer necessary) in First Department. (111 *App. Div.* 528.)
- (19) That the testimony is to be used upon the trial of the action. Ignored in 169 *App. Div.* 814, but see 71 *Misc.* 439, 88 *Misc.* 473, 138 *App. Div.* 249-905.
- (20) That the application is made in good faith.
- (21) Any other facts to show that the order should be granted.
- (22) That no other application has been made to any court or judge for this or any similar order, wherefore this deponent prays for an order directing that the defendant appear and be examined pursuant to the provisions of sections 872-880 of the Code of Civil Procedure, and that the said (*defendant*) appear and submit to an examination. (121 *App. Div.* 677.)

What Affidavit Should Show

(23) Signature of affiant.

(24) Jurat.

When party sought to be examined is a corporation, state in addition to above:

(a) Names of officers, directors, managing agents or any of them whose testimony is material and necessary,

and

(b) The books and papers of the corporation, the contents of which are required to be produced.

For Examination of a Witness:

Before 20 insert:

Facts to show witness is about to depart from the State,

or

Facts to show that witness is so sick or infirm as to afford reasonable grounds to believe that he will not be able to attend the trial,

or

Facts to show that special circumstances exist which render it proper that he should be examined.

Prior to the commencement of an action a party or a witness can be examined for the sole purpose of obtaining testimony. (105 App. Div. 115, 116 App. Div. 117.)

As to what is a special circumstance within the meaning of subdivision 5 of § 872, Code, rendering it proper that a witness should be examined before trial, see 88 App. Div. 117.

The order should be served upon the party and not attorneys. (163 App. Div. 920.)

There should be no distinction between action in Tort and other actions in the allowance of examinations before trial, but under ordinary circumstances the Court will not permit a defendant to examine a plaintiff in any action before trial as to circumstances of the accident or the alleged negligence of defendant. These decisions proceed upon the theory that such an examination before trial would amount to nothing more than a cross-examination of plaintiff and an inquiry into his case.

The rule in the First Department is, that a party plaintiff or defendant, can examine his adversary before trial, only for the purpose of proving facts necessary to the examining parties' affirmative case or defense, but not for the purpose of disproving facts which the adversary must affirmatively prove in order to succeed. In other words, the testimony sought to be elicited must be necessary for the use of the party seeking to elicit it in establishing some facts which he must affirmatively prove. (*Kessler v. North River Realty Co.*, 169 App. Div. 814.)

"Where a defense has been set up which, if established, and unanswered, would destroy the cause of action, if the plaintiff in his moving papers shows that he desires an examination of the defendant, not for the purpose of disclosing that defense which has already been disclosed by the answer, but to avoid it, then such evidence is material and necessary to the plaintiff's cause of action because without it that cause would be gone. Under such circumstances an examination may be had." (140 App. Div. 805,) *e. g.* When an administrator brings an action for damages for death of decedent through negligence of deponent and is confronted with a defense of contributory negligence or compromise claim with decedent in his lifetime (see reasoning of *Itin v. Trust Co. v. Driscoll Brothers & Co.*, 163 App. Div. 54) or an executor suing upon a contract obligation due to decedent meets a defense of payment or offset.

An order for the examination of a defendant before a trial should limit the examination to facts *tending* to support the plaintiff's cause of action (164 App. Div. 926), and defendant cannot examine the plaintiff before trial to ascertain matter upon which plaintiff has the burden of proof (159 App. Div. 899), but may to prove affirmative defense or lack of consideration (160 App. Div. 917). (See *Kerr v. Hammond*, 153 App. Div. 681; and see, generally, *Oakes v. Star Co.*, 119 App. Div. 358.)

When not Granted

An examination in a matrimonial action on the question of alimony is premature where the defense is directed to the merits of plaintiff's right to recover. (*McDonald v. McDonald*, N. Y. L. J., Oct. 25, 1911, Bischoff, J.; *Danziger v. Danziger*, 68 Misc. 452, citing *Haff v. Haff*, 132 App. Div. 338.)

An order for examination before trial will not be granted simply to ascertain the amount of damages (140 App. Div. 507) nor to ascertain against whom the action is to be brought (140 App. Div. 532).

Production of books and papers for use on the examination of a party (not a corporation) can be had only by a subpoena *duces tecum*. (58 Misc. 352.)

A party ordered to appear for examination waives right to move to vacate the order by stipulating to adjourn the examination without reserving the right to move to vacate. (*Schweinburg v. Altman*, 131 App. Div. 795.)

As to affidavits on information and belief, see 171 App. Div. 102.

The following original forms are set forth in full notwithstanding the fact that the Appellate Division held in this case in passing upon these papers that too much relief was demanded and granted and required the examination to be limited to an examination of the defendant, to show that it had notice of the defective condition of the stairway and had control over stairways, halls and lobbies of the tenement house in question. (See 169 App. Div. 814; see also 128 App. Div. 550.)

Of Defendant — Order

FORM No. 195**Order for Examination of Defendant**

SUPREME COURT,
(*New York*) County.

(<i>MARGARET KESSLER,</i>)	}
Plaintiff,	
against	
(<i>NORTH RIVER REALTY COM- PANY,</i>)	
Defendant.	

On reading the annexed affidavits of (*Margaret Kessler*) and (*Donald C. Muhleman,*) both sworn to the (10th) and (13th) days of (*August, 1915,*) respectively, and upon the pleadings herein, and it appearing that no other application has been made for this or a similar order,

NOW, on motion of (*Joline, Larkin & Rathbone,*) attorneys for the plaintiff, it is

ORDERED, that the defendant, (*North River Realty Company,*) above named, be examined as an adverse party herein before trial and its deposition be taken pursuant to §§ 871, 872 and 873 of the Code of Civil Procedure, and that for that purpose (*Louise A. Kissling, its president, George Latour, its vice-president, Joseph Pirro, its secretary, and Jacob Mattern, its treasurer,**) appear before me or one of the Justices of this Court who may be sitting at a Special Term, Part II thereof, in the County Court House in the Borough of Manhattan, City of New York, on the (26th) day of (*August, 1915,*) at (10:30) o'clock in the forenoon of that day or as soon as thereafter as counsel can be heard, and submit to examination and testify concerning the matters stated in said affidavits and relative to the issues in this action,† and it is

FURTHER ORDERED, that at the same time and in aid of said examination, the defendant, (*North River Realty Company,*) produce the following papers and memoranda relevant to

* See 149 *App. Div.* 52; 128 *App. Div.* 550.

† It frequently proves to be unwise to ask broadly for a general examination "relative to the issues in this action," as the Appellate Court may reverse without modifying or limiting the order.

Of Plaintiff — Order

the issues herein, to wit: (*All reports made to the defendant as to the condition of the premises mentioned in the complaint by whomsoever made and all leases and conveyances or verified copies thereof of said premises or any part or parts thereof, by, with or to the North River Realty Company.*)

Service of a copy of this order on the defendant or on (*Louis A. Kissling, its president, or Joseph Pirro, Jacob Mattern or the officers hereinbefore mentioned and on defendant's attorney, Otto D. Parker,*) or any of them, within this State on or before the (19th) day of (*August, 1915,*) shall be sufficient.

Dated, (*New York, August 16, 1915.*)

(*F. B. DELEHANTY,*)

Justice of the Supreme Court of the
State of New York.

FORM No. 196

Order for Examination of Plaintiff

SUPREME COURT,
(*New York*) County.

(*WILLIAM WILSON,*)
Plaintiff,
against

(*AMERICAN TIRE COMPANY,*)
Defendant.

Upon the annexed affidavit of (*John Williams,*) verified the (18th) day of (*September, 1915,*) and on motion of (*Harmon Gold,*) attorney for the defendant herein, it is

ORDERED, that the deposition of (*William Wilson,*) the plaintiff herein, be taken herein, and that for that purpose (*he*) appear before me or one of the Justices of this Court, who may be sitting at Special Term, (*Part II*) thereof, to be held at the County Court House in the (*Borough of Manhattan, City of New York,*) on the (28th) day of (*September, 1915,*) at 10 o'clock in the forenoon of that day, and there submit to examination as an adverse party

Of Plaintiff — Affidavit

before trial, concerning (*the alleged sale and warranty of twelve (12) certain solid rubber automobile tires*). by the defendant herein, and it is further

ORDERED, that the defendant's time to answer, demur or otherwise move with respect to the complaint herein, be and it hereby is extended to (*twenty*) days after the final determination of this proceeding, and it is further

ORDERED, that service of a copy of this order and of the accompanying affidavit, if made upon (*William Wilson*) on or before the (*23rd*) day of (*September, 1915,*) shall be deemed good and sufficient service thereof.

Dated, (*New York, September 19th, 1915.*)

(*CLARENCE J. SHEARN,*)

Justice of the Supreme Court of the
State of New York.

FORM No. 197

Affidavit to Obtain Examination of Plaintiff Before Trial

SUPREME COURT,
(*New York*) County.

(*WILLIAM WILSON,*)

Plaintiff,
against

(*AMERICAN TIRE COMPANY,*)
Defendant.

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*JOHN WILLIAMS,*) being duly sworn, deposes and says:
That he is (*treasurer of the American Tire Company,*) the defendant herein, (*a New York Corporation, with its principal office at 1130 Broadway, in the Borough of Manhattan, City of New York.*)

That this action was commenced by the personal service of a summons on the defendant herein, on the (*2nd*) day of (*August, 1915,*) and that the defendant duly appeared herein on the (*10th*) day of (*August, 1915.*) That on the (*15th*) day of (*August,*

Of Plaintiff — Affidavit

1915,) the plaintiff, by his attorney, (*served an unverified complaint.*) That the time of the defendant to answer herein expires on the (25th) of (*September, 1915,*) having been extended by an order of Court granted on the (5th) of (*September, 1915,*) for (*twenty*) days.

That the plaintiff herein appeared by (*Charles White, his*) attorney, whose office address is (*32 Broadway, Manhattan, New York City,*) and the defendant appeared herein by (*Harmon Gold, its*) attorney, whose office is at (*220 Broadway, Borough of Manhattan, City of New York.*)

That the complaint alleges (*in two causes of action,*) the following: (*That the Drivewell Motor Car Company, prior to the 9th day of December, 1913, purchased from the defendant herein, twelve (12) certain solid rubber automobile truck tires, manufactured by the defendant, and as a part of said sales, the defendant guaranteed and warranted each of said tires to be fit and capable of giving ten thousand (10,000) miles of use and service when attached to and used upon motor trucks for business purposes.*)

That (*said tires were put to the test of ordinary use upon motor trucks for business purposes and failed to give ten thousand (10,000) miles of use and service as guaranteed and warranted by the defendant. That by reason of said alleged facts the warranty and guaranty given by the defendant to the Drivewell Motor Car Company in and as a part and condition of said sale, was broken.*)

That (*by reason of the quality of said tires not being as warranted, after the said tires had been put to the test of ordinary use, each and all of said tires had proved unsatisfactory, and not capable of giving use and service as warranted,*) the loss and damage sustained by plaintiff by reason of (*the difference of value between tires actually delivered and the value as warranted, is the sum of Eleven hundred Dollars (\$1100.)*)

That said (*causes of action against the defendant had been duly assigned to the plaintiff who is now the legal owner thereof, and entitled to enforce same.*)

That the defendant, (*in the regular course of its business with the Drivewell Motor Car Company, sold to it a large number of solid rubber automobile truck tires, prior to the 12th day of December, 1913, upon various conditions, representations and warranties, according to the nature of each sale, on many of such sales, giving no warranty of any kind.*)

Of Plaintiff — Affidavit

As the complaint does not definitely fix (*the time when the said tires were sold, or the exact nature of the warranties and guaranties alleged to have been made,*) the defendant therefore, has no knowledge or means of ascertaining (*which tires the plaintiff refers to in his complaint and the nature and extent of the warranty or guaranty*) the plaintiff claims (*to have been given with respect to said purchase,*) and unless it knows (*specifically or approximately the date or dates upon which said tires referred to by*) the plaintiff in his complaint, (*were sold, and the nature and extent of the warranty, or the conditions which accompanied the sale,*) and how the same are alleged (*to have been given,*) it cannot intelligently and (*truthfully answer the complaint herein.*) * * * [Advice of counsel as to defense on merits and necessity of examination to frame answer and prepare defense.]

That the information and knowledge which the defendant must have (*before it can frame its answer to the complaint*) herein, is peculiarly within the knowledge of the plaintiff herein, and the defendant is unable to obtain such knowledge or information from any other source whatever.

That this application is made in good faith for the purposes stated, and the testimony of the plaintiff is material and necessary to enable the defendant to prove the facts upon the trial, and defendant intends to use said deposition upon the trial, and an order for the examination of plaintiff as a party before trial is asked for this purpose.

That as the defendant's time to serve its answer to the complaint herein, expires on the (*25th*) day of (*September, 1915,*) the deponent respectfully asks that the defendant's time to answer, demur or otherwise move with respect to the complaint herein, be extended until (*twenty*) days after the final determination of this proceeding.

That no previous application for this order has been made.

(JOHN WILLIAMS.)

Sworn to before me this
(18th) day of (*September, 1915.*)

(HARRY RODMAN,)

Notary Public,

(*New York*) County.

Of Defendant — Corporation — Affidavit

FORM No. 198

Affidavit to Obtain Order for Examination of Adverse Party

SUPREME COURT,
(*New York*) County.

(<i>MARGARET KESSLER,</i>) Plaintiff, against (<i>NORTH RIVER REALTY COM- PANY,</i>) Defendant.	}	Index No. (21522.) Year, (1914.)
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STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*MARGARET KESSLER,*) being duly sworn, deposes and says, upon information and belief:

First: That she is the (*plaintiff*) in the above-entitled action. That she lives with her husband at (*No. 11 West 106th Street, Borough of Manhattan, City of New York.*) The defendant is a domestic corporation with its principal place of business in (*the Borough of Manhattan, City of New York.*) The attorneys for the plaintiff are (*Joline, Larkin & Rathbone,*) whose office address is (*No. 54 Wall Street, Borough of Manhattan, City of New York,*) and the attorney for the defendant is (*Otto D. Parker,*) whose office address is (*92 William Street, Borough of Manhattan, City of New York.*)

Second: This action was commenced by the service of a summons on the defendant on the (*30th*) day of (*July, 1914,*) and the service of a complaint on the (*attorney for the defendant, Mr. Otto D. Parker,*) on (*July 30, 1914,*) and issue was joined herein on the (*18th*) day of (*August, 1914,*) by the service of (*defendant's answer.*)

The action was noticed by the plaintiff for trial for the (*November, 1914, Trial*) Term of this Court and is on the (*Trial Term*) Calendar (*No. 1 and is No. 2197.*) It is triable by the Court and a jury.

Third: The action is brought to recover (*damages for personal injuries to the plaintiff alleged to have occurred under the*

following circumstances: On or about the 5th day of June, 1914, the North River Realty Company owned and had control of a tenement or apartment house designated as No. 344 West 48th Street, in the Borough of Manhattan, City, County and State of New York, and the defendant had control of and over all hallways, lobbies and staircases therein which were used in common by the tenants as the sole means of access to and egress from the various apartments in said building to the adjoining street. The plaintiff resided therein with her husband, as tenant. The plaintiff, solely by reason of the negligence and carelessness of the defendant, while lawfully proceeding along the staircase in common use between the fourth and fifth floors of the said building, tripped upon and fell over a defective cloth or carpet on said staircase and was precipitated down to the landing thereof on the fourth floor. By reason thereof the plaintiff was severely injured.) Reference is hereby made to the complaint as if incorporated in and made a part of this affidavit. Judgment is demanded against the (defendant) in the sum of (fifteen thousand (\$15,000)) dollars.

Fourth: The defense (is a general denial on information and belief of all of the material allegations of the complaint.) Depo-
nent asks leave to refer the defendant's answer to all purposes of this application.

Fifth: On information and belief, the names of the officers of the (North River Realty Company,) defendant above named, whose testimony is necessary and material as hereinafter fully set forth, are, (Louis A. Kissling, president,) who resides in (Mount Vernon, in Westchester County, in the State of New York, George Latour, vice-president,) who resides in (Union Hill, in the State of New Jersey,) and has an office at (No. 898 Eighth Avenue, in the Borough of Manhattan, City of New York, Joseph Pirro, secretary,) who resides at (No. 462 West 131st Street, Borough of Manhattan, City, County and State of New York, and Jacob Mattern,) who resides at (No. 6 West 95th Street, Borough of Manhattan, City, County and State of New York.) The offices of the (North River Realty Company) are located (in the belief of the plaintiff at No. 898 Eighth Avenue, in the Borough of Manhattan, City, County and State of New York.)

Sixth: The testimony of the said (North River Realty Company) and of its said officers and their examination before trial

Of Defendant — Corporation — Affidavit

is material and necessary for the plaintiff and for the prosecution of this action by reason of the following facts:

The complaint alleges that the (*defendant reserved to itself the control of and maintenance of all the hallways, lobbies, staircases and means of egress and ingress in said building which were used in common by the tenants of said building and were the sole means of access to and egress from the several apartments in said building which defendant rented to tenants as places of abode.*)

The answer denies these material allegations upon information and belief that (*defendant had the control and custody of the hallways, staircases and means of egress and ingress in said building.*) Such facts can only be gained from an examination of the defendant (*by its officers hereinbefore mentioned, all or some of whom*) have knowledge of the same. The plaintiff has exhausted her means of discovering said facts (*from the examination of records in the Register's Office. Such examination*) has failed to disclose the facts and there is no source known to the plaintiff except the examination of the (*said officers of said defendant corporation*) by which she can prove said allegations. Plaintiff also intends to prove by such examination (*knowledge of and notice to the defendant of the condition of said hallways, lobbies and staircases*) and (*of the reckless, careless and negligent maintenance of the staircase, the defects of which caused the injuries complained of.*) The facts as to all the matters hereinbefore referred to are within the personal knowledge or information of the (*said officers of the defendant corporation,*) as deponent is informed and verily believes.

Deponent is advised by her counsel, (*Donald C. Muhleman,*) and verily believes that the plaintiff cannot safely or properly proceed to the trial of this action or prepare for the said trial without the testimony of the said (*North River Realty Company and of the said officers thereof,*) as to the matters hereinabove stated, which comprise part of the material facts constituted in (*plaintiff's cause of action,*) and without an examination before trial of the (*defendant and defendant's officers*) in connection with the papers hereinafter stated, and the (*plaintiff*) cannot obtain the said evidence or prove the allegations of the (*complaint*) upon the trial in any other manner. In connection with the said examination it is also necessary and material that (*all leases or conveyances of said building or any part thereof by or with the said defendant and reports made to the defendant as to the*

Of Defendant — Order

condition of the premises contained in the complaint by the officers of an Insurance Company or by others) be produced.

Seventh: No other previous application has been made for this or a similar order except as herein stated.

(MARGARET KESSLER.)

Sworn to before me, this }
(10th) day of (August, 1915.) }

(THOS. O'REILLY,)

(Nos. 2873 and 6033,)

(Notary Public,)

(N. Y.) County.

Annex Affidavit of Merits, see p. 365.

Annex Complaint, see p. 311.

FORM No. 199

Order for Examination of Adverse Party before Trial

NEW YORK SUPREME COURT,

(New York) County.

(JOHN DOE,)

Plaintiff,

against

(RICHARD ROE,)

Defendant.

Upon the annexed affidavits of (John Doe,) and (Richard S. Cole) verified respectively the (2nd) and (3rd) days of (January, 1916), and upon the pleadings herein; it is

ORDERED: That the defendant (Richard Roe,) be examined as an adverse party before trial and his deposition taken, pursuant to Sections 870 to 873 of the Code of Civil Procedure, and that for that purpose he appear before me at (Special Term, Part II., to be held in the County Court House, in the Borough of Manhattan, City of New York,) on the (9th) day of (January, 1916,) at (10:30) o'clock in the (forenoon) and submit to the examination concerning the matters set forth in said affidavit, and concerning the issues in this case, and

Of Defendant -- Affidavit

IT IS FURTHER ORDERED that service of this order and of the accompanying affidavits, upon said defendant within this State on or before (*January 4, 1916*), shall be sufficient.

Dated, (*New York, January 3, 1916.*)

(*JOHN FORD,*)

Justice of the Supreme Court.

FORM No. 200

Affidavit to Obtain Examination of Adverse Party

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN DOE,*)

Plaintiff,

against

(*RICHARD ROE,*)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*John Doe,*) being duly sworn, says: I am the plaintiff in the above-entitled action. I reside at (*No. 128 East 22d Street*), in the (*Borough of Manhattan, City of New York.*) My attorneys are (*Cole & Dunn*), whose office and post-office address is (*No. 203 Broadway*), in (*said city.*) The defendant is (*Richard Roe*), who resides at (*115 East 21st Street, Borough of Manhattan, City of New York*), and has his principal place of business at (*No. 10 Warren Street, Borough of Manhattan, City of New York*). Defendant has appeared by (*S. T. Meeks*), his attorney, whose office and post-office address is (*No. 13 Broadway, Borough of Manhattan, City of New York*). The summons and complaint were served upon the defendant on the (*20th*) day of (*December, 1915*), and he served his answer on (*December 29, 1915*), as deponent is informed by (*Richard Cole, one of his attorneys herein.*) and verily believes.

I desire to examine the defendant before the trial of this action in order to obtain proof which I may use at such trial to

support the allegations in my complaint. My reasons for such application are as follows:

(This action is brought to recover damages for personal injuries which I received while a tree was being removed from the premises No. 126 East 22d Street, Borough of Manhattan, City of New York. The injuries I allege in my complaint were caused by the carelessness and negligence of the defendant and of his servants, who were engaged in the removal of said tree. I further allege that at the time of the said accident, the defendant was the owner of and in possession and control of the aforesaid house No. 126 East 22d Street, Borough of Manhattan, City of New York, and that workmen employed by and subject to his orders, were engaged in removing the tree in question from the yard of said premises. Both of these allegations are made upon information and belief.

I am informed by my attorneys that said defendant in his answer admits that at the time of the aforesaid accident he was the owner of the premises 126 East 22d Street, Borough of Manhattan, City of New York, but denies that he was in possession or control thereof, and further denies that he employed the workmen who removed the tree from the yard of said premises, or that he caused said tree to be removed, or that the workmen employed in and about said premises were in any way subject to his order or control.

I desire and expect to prove by the examination of the (defendant) the allegations of my (complaint that the workmen engaged in the work of removing said tree at the time of the accident were in the employ of and subject to the control of the defendant.)

I have fully and fairly stated the facts constituting the cause of action set forth in my complaint, and what I expect to prove by the examination of the defendant to (Richard S. Cole,) one of my counsel herein, and have been advised by said counsel after such statement so made, and verily believe that the examination of (Richard Roe, the defendant herein) is indispensably material and necessary to me for the prosecution of this action, and that I cannot safely proceed to trial without such examination. I have no means of proving said fact except by the testimony of (defendant). My complaint is stated upon information and belief. Said information and belief being derived from (the fact that I have been told that the said defendant superintended such

Of Defendant — Affidavit

removal, gave orders to the workmen, and is in fact the owner of the said house.) I am informed by my attorney that these facts will not be sufficient on the trial of this action to entitle me to recover, but I must have positive proof that *(the defendant was actually the employer of said workmen. I have no means of knowing who these workmen are, or where they can be found. I have caused inquiries to be made to obtain their names and addresses, but I cannot obtain them. I am further informed that at the time of the accident said workmen refused to make any statement whatever as to the person under whose directions they were acting and refused to talk about the matter at all.)*

All the facts as to *(the hiring of said workmen and as to the control of their actions, and as to who was in possession of the said house)* are entirely within the knowledge of *(the defendant,)* who has special and exclusive knowledge of these facts, which are not possessed by me and access to which is not open to me. *(The premises upon which the tree in question stood adjoined in the rear of the residence of defendant. Extensive alterations were being made to said premises at the time of the accident, one of which alterations was the removal of the tree in question, and I saw the (defendant) at the time of the accident apparently giving instructions to the workmen, and the workmen have used the property of the defendant through which to carry materials for such alterations to said premises. From these facts and from the fact that the defendant is the owner of said premises, I verily believe that he was the employer of said workmen,)* but I have no means of proving it, and without the examination of *(defendant)* before trial I cannot obtain testimony which I may offer at the trial of this action in support of said allegation.

I further do not know whether such testimony as said *(defendant)* can give will be sufficient at the trial of the action without further proof from other sources, and for that reason it will not be safe, as I am informed by my counsel, for me to wait until the trial of this action before obtaining the examination of defendant. I furthermore do not know whether it will be possible for me to obtain the presence of said *(defendant)* at the trial of this action by subpoena, inasmuch as I have no means of knowing whether he will be present within the State of New York when the action is reached in its ordinary course and called for trial.

Of Defendant — Affidavit of Attorney

This application is made in good faith for the purpose of obtaining proof to use upon the trial of this action, and for no other purpose. I intend to use at the trial of this action the testimony elicited by the examination of said defendant, and shall then and there read or offer to read the same. No previous application has been made for the annexed order.

(*JOHN DOE.*)

Sworn to before me, this }
(2d) day of (*January*, 1916.) }

(*PERCY L. WORK,*)

Notary Public,

(*New York*) County (*No. 164.*)

FORM No. 201

Affidavit of Attorney in Support of Same

SUPREME COURT,

(*New York*) County.

(*JOHN DOE,*)

Plaintiff,

against

(*RICHARD ROE,*)

Defendant.

STATE OF NEW YORK, }

County of (*New York*), }

ss.:

(*RICHARD S. COLE,*) being duly sworn, says: I am one of the attorneys for the (*plaintiff*) herein. The summons and complaint were served upon the defendant on the (*20th*) day of (*December*, 1915), and issue was joined by the service of the defendant's answer on the (*29th*) day of (*December*, 1915). The cause of action set out in the complaint is (*to recover damages for personal injuries sustained by plaintiff arising out of the negligence of defendant's servants in removing a tree from the yard of certain premises in the Borough*

Of Defendant — Affidavit of Attorney

of Manhattan, City of New York, belonging to defendant. The answer admits the injury to plaintiff, denies that the workmen who caused it were defendant's servants, and alleges that it was caused by plaintiff's own negligence.) No proceedings have been taken herein since joinder of issue as aforesaid. I have not noticed the case for trial inasmuch as I have advised plaintiff that it is not safe for him to proceed to trial before obtaining an examination of the defendant. This testimony is material and indispensably necessary for the proper prosecution by him of this action. This application is made in good faith and solely to substantiate the allegations in the complaint, which were made upon information and belief, and the reason of its being made is that such information, while sufficient to enable me to draw a complaint upon plaintiff's behalf upon information and belief, is not sufficient to sustain said complaint upon the trial of the allegations. (*I have examined the records in the office of the register of the County of New York, and it appears therefrom that the defendant owns the premises from which the tree, the fall of which injured the plaintiff, was being removed, and found no lease or conveyance thereof on record.*)

(RICHARD S. COLE.)

Sworn to before me, this }
(3d) day of (January, 1916.) }

(PERCY L. WORK,)

Notary Public,

(New York) County (No. 645.)

FORM No. 202

Order for Examination of Adverse Party Before Trial — Defendant
a CorporationSUPREME COURT,
(*New York*) County.

(GODFREY GOLDEN,)	}
Plaintiff,	
against	
(UNITED GALVANIZING COM- PANY,)	
Defendant.	

On reading the annexed affidavit of (*Godfrey Golden*), sworn to herein on (*January 9, 1916*), and the pleadings thereto annexed, and on motion of (*Steele & De Forest*), attorneys for the above-named plaintiffs, it is

ORDERED that the above-named defendant, (*United Galvanizing Company*), be examined, and its deposition be taken, pursuant to section 872 of the Code of Civil Procedure; and for that purpose that (*Louis Potter*), as (*president*) of said company, appear before me, at Special Term, (*Part II*) of this Court to be held at the County Court House in (*the Borough of Manhattan, City of New York*), on the (*17th*) day of (*January, 1916*), at (*10:00*) o'clock in the forenoon, and submit to an examination concerning the matters set forth in said affidavit.

FURTHER ORDERED that said (*Potter*) produce upon said examination the (*order books, contract books, ledgers, bank books and check books*) of said (*defendant*), and any other books or papers containing entries of the matters involved in this action.

Service of a copy of this order, and of the papers hereto annexed, upon said (*Louis Potter*) personally, on or before the (*12th*) day of (*January, 1916*), shall be sufficient service thereof.

Dated, (*January 10, 1916*.)

(*EDWARD R. FINCH*.)

Justice of the Supreme Court.

Of Defendant — Corporation — Affidavit

FORM No. 203

Affidavit of Party for Examination Before Trial — Defendant a Corporation

SUPREME COURT,
(*New York*) County.

(GODFREY GOLDEN,)	}
Plaintiff,	
against	
(UNITED GALVANIZING COM- PANY,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(GODFREY GOLDEN), being duly sworn, deposes and says as follows:

Deponent is the plaintiff in the above-entitled action, and resides at (*No. 251 West 104th street, in the Borough of Manhattan, City of New York*). Defendant is a foreign corporation, organized and existing under the laws of (*West Virginia*), and has (*its factory and*) its principal office for the transaction of business at (*No. 1 Park avenue, in the Borough of Brooklyn, City and State of New York*).

This action was commenced on (*April 14, 1914*), by the personal service of the summons and a copy of the complaint herein upon the (*Secretary and Treasurer*) of the defendant. On (*April 14, 1914*), the said defendant appeared herein by its attorney, (*Mortimer Fisher*), Esq., of (*No. 73 Pine street, in the Borough of Manhattan, City of New York*), and on (*April 30, 1914*), served its answer to the complaint herein. This cause is now pending and is numbered (2606) on Calendar (*No. 2*) of the Trial Term of this Court.

The nature of the action, and the substance of the judgment demanded, is as follows: This is an action brought to recover damages for (*a breach of a written contract of agency, dated September 13, 1910, wherein and whereby the defendant agreed to pay the plaintiff's assignors, Messrs. Steele & DeForest and*

Of Defendant — Corporation — Affidavit

Frank E. Holton, certain commissions on all royalties received by it from business obtained or introduced through the efforts of said assignors). The complaint alleges (three separate causes of action for commissions payable on royalties received by the defendant from the United States Navy Yards at Norfolk, Virginia, Boston, Massachusetts, and Philadelphia, Pennsylvania, respectively, on the granting of licenses to said Navy Yards by the defendant). Said complaint demands judgment for the sum of (\$1,800).

The nature of the defense is as follows: The answer of the defendant denies that *(sales were made to the Navy Yards at Norfolk and Boston, but admits that a sale was made to the Navy Yard at Philadelphia, without stating the terms of said sale).* Said answer also denies that *(said sale, or any sale, was made through the efforts of the plaintiff's assignors).* Copies of said complaint, answer and contract of employment are hereto annexed and made a part hereof.

Deponent desires to examine (*Louis Potter*), the (*President*) of the defendant, who has a place for the regular transaction of business at the office of the defendant, (*No. 1 Park avenue, in the Borough of Brooklyn, City of New York*), and who deponent is informed and believes resides at (*No. 642 East Twenty-third street, in said Borough*). The source of deponent's information as to the residence of said (*Potter*) is the (*Directory of the Borough of Brooklyn for the year 1915*). The testimony of said (*Louis Potter*) is material and necessary for deponent for the following reasons: The testimony necessary to establish on the trial (*the actual making of the several sales alleged in the complaint, and the exact terms thereof, can be obtained from but two sources: The defendant and the officials of the several Navy Yards in question.*) The attorneys for deponent have sought to obtain information in regard to the (*installation of the galvanizing plants of the defendant from the officials of the said Navy Yards. Such information was refused by said officials*). The proof of (*said sales, and of the terms thereof,*) is peculiarly within the knowledge of the defendant; (*for, while the plaintiff's assignors can testify as to the introduction of the business and the negotiations had by them, the proof of the actual consummation of the several transactions, and the terms and conditions thereof, must come from the principals therein.*) The testimony of an officer of the defendant is material and necessary for the plaintiff

Of Defendant — Corporation — Affidavit

to have upon the trial of this action, and the plaintiff intends in good faith to use such testimony upon said trial. (*In the verification of the answer herein, said (Potter) swears that he personally took part in negotiations with the several Navy Yards, and is personally familiar with the matters involved in this action, and has in his possession the correspondence between the defendant and plaintiff's assignors, and between the defendant and the officials of the said Navy Yards.*)

Deponent verily believes that said (*Potter*) is more familiar with the matters involved herein than any other officer of the defendant. If plaintiff were left until the trial of this action before having an opportunity to examine an officer of the defendant he would be unable to establish his case, should the officers of said defendant fail to appear at said trial, or should they evade the service of a subpoena. Deponent, therefore, asks that an order be made herein directing said (*Potter*) to appear for examination in regard to the several matters referred to in this affidavit, and that upon said examination said (*Potter*) be directed to produce the (*order books, contract books, ledgers, bank books and check books*) of said defendant, and any other books or papers containing entries of the matters involved in this action.

No previous application has been made for the order applied for hereon.

(GODFREY GOLDEN.)

Sworn to before me, this }
(9th) day of (*January*, 1916). }

(JOHN PORTER,)

Notary Public, No. (192,)

(*Kings*) County.

(Cert. filed in N. Y. Co.)

Staying Examination — Order to Show Cause

FORM No. 204

Staying Examination Pending Appeal From Denial of Motion to
Vacate Order for Examination — Order to Show CauseSUPREME COURT,
(*New York*) County.

(AGNES CONE,)

Plaintiff,

against

(MIDLAND COMPANY, DANIEL
LEONARD, and JAMES HOLMES,)

Defendants.

Upon the pleadings herein, and upon the order for the examination of the defendants before trial, the order to show cause why same should not be vacated and the affidavits for and against the same, and the order denying said motion and the notice of appeal to the Appellate Division from said order, and the annexed affidavit of (*Alfred Reeves*,) verified the (24th) day of (*April*, 1916), and the affidavit of (*William Dalton*,) verified (*April* 25, 1916), it is

ORDERED that the plaintiff or her attorneys show cause at Special Term, (*Part I*) of this court, appointed to be held in and for the County of (*New York*) at the County Court House in the (*Borough of Manhattan, City of New York*,) on the (27th) day of (*April*, 1916,) at 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, why all proceedings under the order for the examination of the defendants or either or any of them before trial should not be stayed pending an appeal to the Appellate Division for the (*First Judicial*) Department by the defendants from the order entered herein in the office of the Clerk of the County of (*New York*) on the (24th) day of (*April*, 1916), denying their motion to vacate and set aside said order and why the defendants should not have such other, further or different order or relief in the premises as may be just or proper; and until the hearing and determination of this application for a stay pending said appeal, all proceedings under said order for the examination of the defendants before trial and the order of

Staying Examination — Affidavit

this court filed and entered in the office of the Clerk of the County of (*New York*) on the (*22d*) day of (*April*, 1916), directing that the examination should proceed on the (*27th*) day of (*April*, 1916), are hereby stayed.

Service of this order by delivering a copy thereof to the attorneys for the plaintiff on or before the (*26th*) day of (*April*, 1916), shall be sufficient.

Dated, (*New York*, *April* 25, 1916.)

(*NATHAN BIJUR*,)

Justice of the Supreme Court of the
State of New York.

FORM No. 205

Affidavit on Motion for Stay of Examination Pending Appeal

SUPREME COURT,
(*New York*) County.

(*AGNES CONE*,)

Plaintiff,

against

(*MIDLAND COMPANY, DANIEL
LEONARD, and JAMES HOLMES*,)

Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*Alfred Reeves*,) being duly sworn, says: I am a member of the firm of (*Reeves & Tod*,) and one of the attorneys for the defendants in the above-entitled action.

That on or about the (*27th*) day of (*March*, 1916,) the plaintiff procured an order from Hon. (*Edward J. Gavegan*,) Justice of this court, directing that the defendant, (*Midland Company, by James Holmes, President and Secretary, and Daniel Leonard, Manager and Agent, and the defendants, James Holmes and Daniel Leonard*,) appear before one of the the Justices of this

Staying Examination — Affidavit

court, at Special Term thereof, to be held at the County Court House, (*Richmond, Staten Island,*) on the (*8th*) day of (*April, 1916,*) at the opening of court on that day to be examined then and there and on such days to which said examination may be adjourned; said examination to be with respect to the issues in this action, particularly (*the use, possession and control of by the defendant and the character, description and construction of premises,*) described in the complaint and (*the occurrences referred to in the complaint as having occurred on the 23d day of May, 1915, resulting in the injuries referred to in the complaint,*) and with respect to the other matters referred to in the complaint and the affidavit accompanying said order, and said defendants were thereby directed and required to produce upon said examination (*all books, records, documents and letters*) in any wise relating to the (*ownership, possession and control of the said premises.*)

On or about the (*6th*) day of (*April, 1916,*) defendants procured an order from a Justice of this court, directing the plaintiff to show cause why said order for the examination of the defendants should not be set aside. That said motion was denied and the said examination was directed to proceed on (*April 27, 1916,*) at the same hour and place and pursuant to the terms of the order for examination of said defendants, by an order entered on the (*22d*) day of (*April, 1916,*) in the office of the Clerk of the County of (*New York.*)

Defendants intend in good faith to immediately appeal from the said last mentioned order and to diligently prosecute said appeal. As an appeal will be futile if the examination is had in the meantime, deponent asks that all proceedings under said order may be stayed pending this application for a stay and pending the appeal from said last mentioned order to the Appellate Division for the (*First*) Department. That the reason why an order to show cause is asked for is because the examination of defendants is set for the (*27th*) day of (*April, 1916,*) and the usual notice of motion, to wit, five days, could not be given.

That no notice of trial has been served to date in this action, and deponent verily believes that the action could not be brought to trial within (*one year*) if a notice should now be served. That a decision on the appeal heretofore referred to may be reasonably expected within (*ten months.*) and deponent verily

Of Witness, de bene essé—Affidavit

believes that no harm can result to the plaintiff by reason of this stay.

That no previous application has been made to any Court or Judge thereof for the relief herein sought.

WHEREFORE, deponent requests an order of this court directing the plaintiff or her attorneys to show cause before Special Term, (*Part I*) of this court, to be held at the County Court House in the (*Borough of Manhattan, City of New York,*) on the (*27th*) day of (*April, 1916,*) at 10:30 A. M. or as soon thereafter as counsel can be heard, why a stay pending an appeal from the order of this court heretofore granted should not be granted.

(*ALFRED REEVES.*)

Sworn to before me, this }
(*24th*) day of (*April, 1916.*) }

(*EMMA RING,*)

Notary Public,

(*N. Y. Co., No. 235.*)

FORM No. 206

Examination of Witness Before Trial—Affidavit to Obtain

SUPREME COURT,
(*Saratoga*) County.

(*SAMUEL OSMOND,*)
Plaintiff,

against

(*ARTHUR FARBER,*)
Defendant.

STATE OF NEW YORK, }
County of (*Saratoga,*) } ss.:

(*WINTHROP FRYE*), being duly sworn, says that he is one of the attorneys for the (*plaintiff*) in the above-entitled action and resides and has his place of business at (*Saratoga Springs, New York*).

That the plaintiff resides at (*No. 40 West 42d street in the*

Of Witness, de bene esse—Affidavit

Borough of Manhattan, City and County of New York), and has a place of business at (*No. 2 Rector street in said Borough*).

That the defendant resides in the (*Town of Schuylerville*) in said county, and has his place of business at (*170 Broadway, Borough of Manhattan, City of New York*), as deponent is informed and verily believes.

That this action was commenced by the service of a copy of the summons and complaint upon the defendant (*Arthur Farber*) at his said place of residence on the (8th) day of (*September, 1915*), as appears by the affidavit of service hereto attached. That the defendant has appeared and answered by (*Niles & Niles*), whose office and post-office address is (*17 Wall street, Borough of Manhattan, New York City*), and whose residences are as follows: (insert)

That this action is brought to recover the sum of (*one thousand*) dollars (\$1,000) for (*professional services performed by William Wallace, the plaintiff's assignor, as a physician and surgeon and for medical service and attendance and furnishing medicines, etc.,*) to the defendant (*and members of his family*) at the (*City of Genoa, Italy*), at the special request of the defendant, as appears by the complaint, a copy of which is hereto annexed and marked "A."

That the answer of the defendant was served on (*September 29th, 1915*), and is in substance a general denial.

That, as deponent is informed and believes, (*William Wallace*) is a physician and surgeon residing and practicing his profession in the (*City of Genoa, Italy*); that deponent has learned from said (*Wallace*), through interviews and by correspondence with him, the facts which he expects to prove by (*Miss Mary Rowen*), who resides, as deponent is informed and believes, at (*Hotel Martha Washington, 30 East 30th street, Borough of Manhattan, New York City*). That plaintiff expects and desires to prove by said (*Mary Rowen*) that (*Eleanor Farber, a daughter of the defendant, was seriously ill and confined to her bed and was continuously under the plaintiff's care in the City of Genoa, Italy, for a period of two months, namely, from June to September, 1914, and that during said period said William Wallace attended said Eleanor Farber upwards of sixty times and furnished to her medicines and medical treatment*); and plaintiff further expects and desires to prove by said (*Mary Rowen*) that during said times she was (*the tutor and traveling companion to said Eleanor*

Of Witness, *de bene esse*—Affidavit

Farber and had the care and charge of her during said illness, and she was employed by the defendant as such tutor and traveling companion for his said daughter Eleanor).

Deponent further says that the testimony of said witness (*Mary Rowen*) is absolutely necessary and material for the plaintiff upon the prosecution of this action, and that without such testimony the plaintiff cannot safely proceed to trial for the reason that (*said Mary Rowen was at said times in the employ of the defendants and acting as tutor and traveling companion of defendant's said daughter, and as such procured the attendance and services of plaintiff for defendant's said daughter*) and that said (*Mary Rowen was during all said times present with and assumed charge of said daughter's care during her illness*) as alleged in the complaint.

That said (*Mary Rowen*), the said witness, is and for several months has been in feeble health, as deponent is informed and believes, and intends to sail for Europe on the (7th) day of (*March, 1916*), and will not return to the United States in time to attend the trial of this action, as deponent has been informed by a letter from said (*Mary Rowen*), which is hereto annexed and made a part of this affidavit, and verily believes.

That unless the said witness be examined conditionally and her testimony taken *de bene esse* before she leaves this country, to wit: on the (7th) day of (*March, 1916*), the plaintiff will lose the benefit of her testimony.

That it is the intention and purpose of the plaintiff to examine said (*Mary Rowen*) as a witness and to use her deposition as evidence upon the trial of this action.

An affidavit of merits made by deponent and verified the (16th) day of (*December, 1915*), was filed herein on the (21st) day of (*December, 1915*), with the papers in which (*an examination of defendant before trial was taken by order of this Court on that day*).

That no previous application for this or any similar order has been made by or on behalf of the plaintiff.

(*WINTHROP FRYE.*)

Sworn to before me, this }
(2d) day of (*March, 1916.*) }

(*CHARLES LOCKWOOD,*)

Notary Public,

(*Saratoga*) County.

FORM No. 207

Examination of Witness Before Trial — Order of Reference

SUPREME COURT,
(*Saratoga*) County.

(<i>SAMUEL OSMOND</i> ,)	}
Plaintiff,	
against	
(<i>ARTHUR FARBER</i> ,)	
Defendant.	

On reading and filing the affidavit of (*Winthrop Frye*), verified the (2*d*) day of (*March*, 1916), hereto annexed, and the pleadings herein and

On motion of Messrs. (*Frye & Bennett*), attorneys for (*plaintiff*),

ORDERED that (*Charles G. Moody*), of (*Saratoga Springs, New York*), a counsellor-at-law, be and he hereby is appointed Referee herein to take the deposition of (*Mary Rowen*), as a witness for the (*plaintiff*), conditionally in this action.

And it is further ordered that the (*plaintiff*) cause the examination of said witness to be brought on before said Referee at (*Hotel Martha Washington, No. 30 East 30th street, Borough of Manhattan, City of New York*), on the (6*th*) day of (*March*, 1916), at noon, and that the (*plaintiff*) give the attorneys for the (*defendant*) notice of the time and place of such examination (*by mail*) at least (*three*) days before the same, which notice shall be deemed sufficient.

Dated, (*March 2*, 1916.)

(*WILLIAM P. RUDD*,)

Justice of the Supreme Court.

Of Witness, de bene essé — Order

FORM No. 208**Order for Examination of Witness Before Trial**

SUPREME COURT,
(*Saratoga*) County.

(<i>SAMUEL OSMOND</i> ,)	}
Plaintiff,	
against	
(<i>ARTHUR FARBER</i> ,)	
Defendant.	

On the annexed affidavit of (*Winthrop Frye*), one of the attorneys for the plaintiff in the above entitled action, verified (*March 2, 1916*),

ORDERED that (*Mary Rowen*) of the (*Borough of Manhattan, City of New York*), be examined before (*Charles G. Moody*), an attorney-at-law, the Referee appointed herein for that purpose, as a witness in the above entitled action, conditionally, at (*the Hotel Martha Washington, No. 30 East 30th street, Borough of Manhattan, New York City*), on the (*6th*) of (*March, 1916*), at noon, and that Messrs. (*Niles & Niles*), the attorneys for the defendant herein, be given notice of such examination by service upon them (*by mail*) of a copy of this order and affidavit on or before the (*3d*) day of (*March, 1916*).

Dated, (*March 2, 1916*.)

(*WILLIAM P. RUDD*,)

Justice of the Supreme Court.

FORM No. 209

Examination of Witness Before Trial — Notice of Examination

Sirs:

YOU WILL PLEASE TAKE NOTICE of the orders made herein by Hon. (*William P. Rudd*,) Judge of the Supreme Court of the State of New York, dated (*March 2, 1916*), of which the foregoing are copies; and that pursuant thereto the (*plaintiff*) will take the deposition of (*Mary Rowen*) as a witness, as therein provided on the (*6th*) day of (*March, 1916*), at (*noon*), at (*the Hotel Martha Washington, No. 30 East 30th Street, Borough of Manhattan, New York City.*)

Dated, (*New York, March 3, 1916.*)

Yours, etc.,

(*FRYE & BENNETT*,)Attorneys for (*Plaintiff.*)

To

Messrs. (*NILES & NILES*,)Attorneys for (*Defendant.*)

DISCOVERY AND INSPECTION

Examination before trial, under §§ 872-880, Code, and proceedings for Inspection and Discovery, under §§ 803-809, Code, cannot be had in one and the same proceeding.

Discovery can be had not only of a book, document or other paper, but the Code now provides for discovery of "any article or property" as well.

The Court may give permission to take a photograph or take a copy.

As to the practice generally, see Rules 14, 15 and 16, G. R. P.

An inspection of all the general books of a party will not be ordered to establish facts which can be ascertained by an examination of the party. The better practice seems to be to secure an examination of the party and ascertain therefrom of what books and papers of the party, an inspection is necessary and then to obtain an order for such discovery. (127 *App. Div.* 729.)

In actions to recover commissions on sales or compensation based on a percentage of business transacted, see 132 *App. Div.* 837, 110 *App. Div.* 633.

FORM No. 210

Discovery of Books and Papers — Petition*

SUPREME COURT,
(*New York*) County.

(*JOHN LITTLE*),

Plaintiff,

vs.

(*ARTIFICIAL STONE COMPANY*),

Defendant.

To the Supreme Court of the State of New York:

The petition of (*John Little*) respectfully shows to this court as follows:

I. That he is the plaintiff in this action and resides at (*No. 25 West 60th street, in the Borough of Manhattan, City of New York.*)

* See 116 *App. Div.* 219.

II. That this action was commenced by the service of a summons and complaint on the defendant herein on the (19th) day of (February, 1916,) and issue was joined herein on the (16th) day of (March, 1916,) by the service of an answer that the defendant appeared herein on (March 16th, 1916), by his attorney, (Oliver Hodge,) whose office and post office address is (No. 32 Wall street, Borough of Manhattan, City of New York.)

III. That this case is at issue and on the general calendar of this court, and that the place of trial of this action is the county of (New York.)

IV. That the defendant is, and at all the times hereinafter mentioned, was (*a domestic business stock corporation engaged in the business of manufacturing of artificial stone and a patented substitute for building stone known as "nearstone," and has its principal place of business at No. 220 Broadway, Borough of Manhattan, City of New York.*)

V. That this action is brought, as more fully appears by the complaint herein, a copy of which is hereto annexed and made a part hereof, to recover the sum of (\$24,000 *due to plaintiff upon a contract made by the defendant with petitioner whereby he loaned to defendant at various times sums aggregating \$10,000, and the defendant on its part agreed to use and invest all of said advances and loans in establishing selling branches and agencies for the sale of and to promote and develop the use and sale of its product in the State of Ohio. Said agreement further provided that all of the sums so advanced and loaned by the plaintiff were to be repaid by the defendant in annual payments out of the profits of its business thus to be produced and developed in the State of Ohio, at the rate of 10 per cent. of the net profits of such business as shown by semi-annual statements of the business done, said payments to commence as soon as the semi-annual statements showed net annual profits of \$5,000 or upwards and to continue until the entire loan was repaid. Said agreement further provided that plaintiff was to receive no interest for said loans but was to be paid in addition to the part payments on his loan, 15 per cent. of the net profits of the defendant's business in the State of Ohio, and such payments were to commence as soon as the earnings of defendant from said business equalled \$5,000 per annum, and thereafter so long as the Ohio business of defendant produced net earnings in excess of \$5,000 per annum, plaintiff was to be paid 20 per cent. of the net profits of such business.*

Of Books and Papers—Petition

The complaint further alleged that since the making of said contract and as the result of the employment in its business of the sums so loaned to defendant it has established and enjoyed a large, profitable and constantly increasing business in the sale of its product in the State of Ohio, and that during the period mentioned in the complaint defendant has earned and received net earnings and profits which were produced by and arose out of the business so transacted in the State of Ohio in excess of \$10,000 per annum, and that no part of the moneys so loaned and advanced by plaintiff has been paid and defendant has never paid any sums whatever to plaintiff.)

VI. That after a full and fair statement of the facts of this case to (*Oliver Hodge*,) his counsel herein, petitioner is advised by his said counsel that an inspection and discovery of the following books, papers, documents and accounts is necessary to petitioner to establish his cause of action upon the trial of this cause, to wit: (*all the ledgers, sales books, contract registers, material books, invoice and delivery books, accounts in said books showing the business done by defendant in the State of Ohio during the times stated in the complaint, the contracts made by the defendant with a large number of persons and corporations in said State during said period, together with the dates thereof, the amounts received and still receivable thereunder;*) and also all (*contracts in writing made by defendants with said persons and corporation during the period of petitioner's contract, viz.: from January 1, 1911, to January 1, 1916.*) That such inspection and discovery is necessary and material to petitioner to show (*the facts, items, amounts involved, and number of contracts secured, and sales made and business transacted throughout the State of Ohio,*) set forth in the complaint, and said facts (*items and amounts*) can be proved only by a discovery and inspection of the books, papers and accounts above described.

That all of said books, papers, documents and accounts were, during the whole period herein mentioned, kept in the sole control of the (*defendant*) and (*their*) servants and agents, and are now and ever have been in the exclusive possession, custody and control of the said (*defendant*) herein, and that no copies of said papers, books, documents or accounts exist.

That your petitioner has made diligent effort to obtain the foregoing information of said items, facts, amounts, but has been unable to discover any person who possesses such knowledge or

Of Books and Papers — Petition

information, and that your petitioner has no available proof outside the said books, documents, papers and accounts, of the amount of the indebtedness of the (*defendant*) to him.

That neither of said books, documents, papers or accounts nor any copy thereof is now or ever has been in the possession or under the control of your petitioner.

That your petitioner, through (*Oliver Hodge*,) his attorney, has requested and demanded of (*defendant*) permission to inspect said books, documents, papers and accounts, which request has been denied as appears more fully by the affidavit of (*Oliver Hodge*,) verified (*July 10, 1916*,) hereto annexed and made a part hereof.

That no previous application for an order of Inspection and Discovery has been asked for herein.

Wherefore your petitioner prays that an order may be granted directing the (*defendant*) herein, (*Artificial Stone Company*,) to produce and discover and to allow to the plaintiff an inspection and copy, or permission to take a copy of (*such portions of all ledgers, sales books, material books, invoice and delivery books, contract registers, accounts receivable and all other accounts as bear upon the transactions involved in this action*,) papers, books, contracts and documents possessed by or under the control of the (*defendant*) which will show the transactions above described between (*January 1, 1911, and January, 1916*,)

And in default thereof to show cause on the (*18th*) day of (*July, 1916*,) at (*10:30*) o'clock in (*fore*)noon, at Special Term, (*Part I*,) of this Court to be held at the County Court House in the (*Borough of Manhattan, City of New York*,) why the prayer of the petition should not be granted; and that all proceedings on the part of the (*defendant*) be stayed until the hearing and determination of this application.

(*JOHN LITTLE*.)

Dated, (*New York, July 10, 1916*,)

(*Verification*.)

FORM No. 211

Order for Discovery of Books and Papers

SUPREME COURT,
(*New York*) County.

(<i>JOHN LITTLE,</i>)	} Plaintiff,
against	
(<i>ARTIFICIAL STONE COMPANY,</i>)	
Defendant.	

Upon reading and filing the annexed petition of (*John Little,*) the plaintiff herein, verified the (10th) day of (*July, 1916,*) with the annexed copies of the pleadings and the annexed affidavit of (*Oliver Hodge,*) verified the same day,

On motion of (*Oliver Hodge,*) attorney for the (*plaintiff.*)

IT IS ORDERED that the (*defendant*) herein, (*Artificial Stone Company,*) be and it is hereby directed to produce and discover and to allow to the (*plaintiff*) an inspection and copy, or permission to take a copy of (*such portion of all ledgers, sales books, material books, invoice and delivery books, contract registers, accounts receivable and all other accounts, papers, books, contracts and documents*) possessed by or under the control of the defendant as will show all transactions involved in this action between (*January 1, 1911, and January 1, 1916.*)

Or in default thereof to show cause on the (18th) day of (*July, 1916,*) at (10:30) o'clock in the (*fore*)noon, at Special Term, (*Part I*) of this Court, to be held at the County Court House in the (*Borough of Manhattan, City of New York,*) why the prayer of said petition should not be granted;

And it is further ordered that all proceedings on the part of the (*defendant*) be and hereby are stayed until the hearing and determination of this application.

Dated, (*New York, July 10, 1916.*)

(*JOHN C. CLARK,*)

(*Justice of the Supreme Court.*)

FORM No. 212

Petition for Discovery of Document*

SUPREME COURT,
(*New York*) County.

(<i>JAMES MOORE,</i>)	}
Plaintiff,	
against	
(<i>THE NEW YORK BOOK COM- PANY,</i>)	}
Defendant.	

To the Supreme Court of the State of New York:

The petition of (*James Moore,*) the (*plaintiff*) above named, respectfully shows to this Court as follows:

I. That he is the (*plaintiff*) in this action and resides at (*No. 42 West 54th Street in the Borough of Manhattan, City of New York.*)

II. That this action was commenced by the service of a summons and complaint on the defendant herein on the (*19th*) day of (*February, 1916,*) and issue was joined herein on the (*16th*) day of (*March, 1916,*) by the service of an answer; that the defendant appeared herein on (*March 16, 1916,*) by his attorney, (*Oliver James,*) whose office and post-office address is (*No. 14 Wall Street, Borough of Manhattan, City of New York.*) That this case is at issue and on the (*General Trial*) Calendar (*No. 2*) of this Court, and the place of trial of this action is the County of (*New York,*) and the next Trial Term of Court at which this action can be tried is appointed to be held beginning (*October 2, 1916.*)

III. That the defendant is, and at all the times hereinafter mentioned, was a domestic business stock corporation, engaged in the business of (*printing and selling books,*) and has its principal place of business at (*26 Broadway, in the Borough of Manhattan, City of New York.*)

IV. That this action is brought to recover (*damages for unlawful discharge under an oral yearly agreement of employment*

* See 43 Misc. 618.

Of Document — Petition

between plaintiff and defendant whereby defendant did employ this plaintiff as its salesman,) as more fully appears from the (complaint) herein.

V. That (as a separate defense the defendant has pleaded that the said agreement was abrogated in the course of the year and that a new contract in writing between this plaintiff and defendant was entered into,) as more fully appears by the (answer interposed) herein.

VI. Your petitioner has no knowledge of any such (written contract;) that he has no copy of same in his possession or under his control, and denies that (he ever entered into any such contract as alleged in defendant's answer.)

VII. That after a full and fair statement of the facts of the case to (James Hall,) his counsel herein, petitioner is advised by his said counsel that he has good and substantial cause of action upon the merits, and so verily believes, and is further advised by his said counsel that an inspection and discovery of said (written contract alleged in said defendant's answer) is necessary to petitioner to establish his cause of action upon the trial of this cause (and to controvert the defense set forth in defendant's answer.)

VIII. That such inspection and discovery is necessary and material to petitioner to show (that no such contract in writing was made by petitioner, abrogating the contract alleged in the complaint herein,) and said facts can be proven only by a discovery and inspection of said alleged contract.

IX. That the paper purporting to be (the contract between your petitioner and defendant as alleged in its answer) is in the sole custody of (defendant and its servants and agents,) and is now and ever has been in the exclusive possession, custody and control of the (defendant) herein, and that no copy of said paper exists to the best of deponent's knowledge and belief.

X. [That your petitioner has made diligent effort to obtain the foregoing information of [] but has been unable to discover any person who possesses such knowledge or information, and your petitioner has not available proof outside of said [].]

XI. That your petitioner through (James Hall,) his attorney, has requested and demanded of (defendant) permission to inspect the said alleged written contract, which request has been denied, as appears more fully by the affidavit of (James Hall,) verified the (2d) day of (July, 1916,) hereto annexed and made a part hereof.

That no previous application for an order of inspection and discovery has been made herein.

WHEREFORE, your petitioner prays that an order may be made herein, directing the (*defendant*) herein, (*the New York Book Company,*) to produce and discover and to allow the plaintiff an inspection of and to deliver to (*plaintiff*) a copy of such (*alleged contract referred to in defendant's answer,*) and in default thereof, to show cause on the (*18th*) day of (*July, 1916,*) at (*10:30*) o'clock in the forenoon at Special Term, (*Part I*) of this Court, to be held at the County Court House in (*the Borough of Manhattan, City of New York,*) why the prayer of the petitioner should not be granted; and that all proceedings on the part of the defendant be stayed until the hearing and determination of this application.

Dated, (*New York, July 3, 1916.*)

(*JAMES MOORE,*)

Petitioner.

(Verification.)

PHYSICAL EXAMINATION BEFORE TRIAL

The order should not direct a general oral examination of the plaintiff, nor an examination as to how the accident happened. It should be limited to inquiries as to the nature and extent of the injuries complained of and the peculiar manner in which the injuries were received so far as necessary to enable the defendant to ascertain the nature and extent of such injuries. (121 *App. Div.* 636.)

The order should not contain a direction that the examining physician file a report or to disclose before the trial results of the physical examination. (75 *Misc.* 207.)

It would seem that an X-ray cannot be ordered. (161 *App. Div.* 381.) As to physical examination before trial, generally, see 75 *Misc.* 205, *aff'd*. 151 *App. Div.* 899, 164 *App. Div.* 932.

FORM No. 213

Physical Examination Before Trial — Order

SUPREME COURT,

(*Kings*) County.

(*PETER FRENCH*,) an infant by
(*Murray French, his Guardian ad*
litem,)

Plaintiff,

against

(*METROPOLITAN COMPANY*,)
Defendant.

Upon the pleadings and proceedings had herein, and upon the annexed affidavit of (*Daniel Boon*,) verified the (29th) day of (*September*, 1916,) and it appearing to me that proper cause has been shown for an oral and physical examination of the plaintiff herein, as an adverse party before trial,

NOW, on motion of (*James Lee*,) Esq., attorney for the defendant, it is

Order

ORDERED that on the (5th) day of (*October, 1916,*) at (10) o'clock in the (*fore*)noon of that day (*Peter French,*) of (161 *East Eleventh Street, Borough of Manhattan, City of New York,*) the plaintiff in this action, appear before (*Bradford Foster,*) who is hereby appointed referee for the purpose, at (160 *Broadway, Borough of Brooklyn,*) the office of the said referee, and that the plaintiff then and there be examined by the defendant herein as an adverse party before trial with reference to the manner, nature, location, extent and effect of the injuries alleged in the complaint herein to have been caused by the defendant, its agents, servants or employees. And it is

FURTHER ORDERED that the said plaintiff appear before the said referee at the time and place mentioned above, and that he then and there submit in the presence of such referee and physician duly named and counsel for the respective parties herein to an oral examination with reference to the nature, extent and location and effect of the injuries alleged in the complaint herein and the peculiar manner in which the injuries were received, so far as necessary to enable the defendant to ascertain the nature and extent of such injuries to be made by (*Bradford Foster,*) who is hereby appointed by the Court for the purpose of taking such oral examination, and in which oral examination counsel for the respective parties may participate. And it is

FURTHER ORDERED that subsequent to such oral examination by the said (*Bradford Foster*) and the aforesaid counsel, the plaintiff herein shall submit to an examination of his person to be made by the said (*Roland Rome,*) M. D., with reference to his physical condition, and with respect to the nature, location, extent and effect of the injuries alleged in the complaint to have been caused by the negligence of the defendant, its servants, agents or employees. And the said referee should then and there certify the testimony of the plaintiff for the taking of which provision is hereby made to this Court. And it is

FURTHER ORDERED that the plaintiff and his attorney be and they hereby are stayed from taking any further proceedings in this action except to review or vacate this order until the filing in this Court of the report of the referee aforesaid.

It appearing that the reason that the defendant asks that this examination be held on the (5th) day of (*October, 1916,*) and the service of a copy of this order upon the plaintiff or his attorney be made on or before 6 o'clock P. M. on the (30th) day of

Affidavit

(*September, 1916,*) which is less than the five days' notice required to be given by section 873 of the Code of Civil Procedure, is that (*the case is now on the calendar of this Court, and a motion for a preference herein and to designate a day certain during the October Term upon which said case may be heard has been made in this case, and said case may be reached for trial before five days' notice required by said section of the Code shall have expired,*) and

Sufficient reason therefor appearing, let service of a copy of this order upon the plaintiff and his attorney on or before 6 o'clock P. M. on the (30th) day of (*September, 1916,*) be sufficient.

Dated, (*Brooklyn, September 29th, 1916*).

(*G. J. GARRETSON,*)
Justice of the Supreme Court.

FORM No. 214

Physical Examination Before Trial—Affidavit to Obtain

SUPREME COURT,
(*Kings*) County.

(*PETER FRENCH,*) an infant by
(*Murray French, his Guardian ad*
litem,)

Plaintiff,

against

(*METROPOLITAN COMPANY,*)
Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*DANIEL BOON,*) being duly sworn, deposes and says:

That he is Vice-President and an officer of the (*Metropolitan Company,*) the corporation defendant in the above-entitled action; that the statements made in this affidavit are made upon information and belief, except where hereinafter expressly stated to be

Affidavit

made upon deponent's own knowledge; that the sources of deponent's information and the grounds of his belief are books of record kept in the office of said corporation defendant, which books deponent believes to be correct; also reports made to deponent by officers, servants and employees of said corporation defendant with reference to this action, which reports deponent believes to be true.

That this action is brought to recover the sum of (*five thousand*) (\$5,000) dollars damages for personal injuries and consequential damages alleged to have been sustained by the plaintiff through the carelessness and negligence of the defendant, its agents, servants or employees on or about the (*4th*) day of (*August, 1916,*) at (*or near the intersection of Broadway, and 14th Street, Borough of Manhattan, City of New York,*) as shown by the complaint herein.

That this action was commenced by the service of a summons and complaint on the (*12th*) day of (*August, 1916,*) upon which day the defendant duly served its notice of appearance, and that thereafter on the (*1st*) day of (*September, 1916,*) issue was joined herein by due service of defendant's answer, which answer is substantially a general denial of all the material allegations contained in the complaint.

The plaintiff herein, (*Peter French,*) resides at (*No. 161 East Eleventh*) street, (*Borough of Manhattan, City of New York,*) and appeared in this action by (*Martin Thomas,*) Esq., attorney and counsellor at law, with offices at No. (*375 Fulton*) street, (*Borough of Brooklyn, City of New York,*) and the defendant, (*Metropolitan Company,*) having its offices and principal place of business at No. (*62 Broadway, in the Borough of Manhattan, New York City,*) appeared herein by (*James Lee,*) Esq., attorney and counsellor at law, who has an office at No. (*21 Park Row, Borough of Manhattan, City of New York.*) There has been no change of parties or attorneys herein.

That no physical examination of this plaintiff has been had in the interest of the defendant, although the defendant has requested from (*Martin Thomas,*) Esq., the attorney for the plaintiff herein, a physical examination of the plaintiff, and said counsel has refused to allow the plaintiff to consent to submit to such physical examination. That the defendant has no information and cannot obtain any information in regard to the plaintiff's physical condition, nor of the nature, extent or effect of the injuries alleged

Affidavit

to have been sustained by the plaintiff, and only by an oral and physical examination, as provided by the Code of Civil Procedure can this defendant obtain sufficient information concerning the nature, location, extent and effect of the injuries sustained by the plaintiff, to enable the defendant to properly meet upon the trial of this action the allegations contained in the complaint.

That the defendant herein intends in good faith to defend this action. That it is absolutely necessary for the defendant to have such physical examination and to have such testimony as it seeks through the order herein asked for, in order that it may learn the nature, location, extent and effect of the injuries alleged in the complaint to have been sustained by the plaintiff. That this testimony may be used at the trial, and that it is necessary to obtain this information now rather than at the trial, so that the defendant may know what the injuries are and be able to properly defend this action at the time of the trial. The defendant submits that the plaintiff is in a position to have knowledge as to the physical injuries alleged to have been sustained and which it is now necessary for the defendant to know in order that the defendant may safely proceed with the defense of this action. And the defendant having, through its officers, agents and employees, diligently endeavored to obtain this information, and being utterly unable to obtain any definite information with regard thereto, now seeks a physical examination of the plaintiff herein, in order to obtain a statement of the injuries and expert testimony as to the nature, extent and effect.

That the reasons why the defendant asks this examination be held on the (3rd) day of (October, 1916.) and that service of a copy of this order upon the plaintiff and his attorney be made on or before 6 o'clock P. M. on the (30th) day of (September, 1916,) which is less than five days' notice required to be given by section 873 of the Code of Civil Procedure, is that (*the case is now on the calendar of this Court and a motion for preference and to designate a day certain during the (October) Term for the trial of this case has been made and said case may be reached for trial before the usual five days' notice as required by section 873 of the Code of Civil Procedure shall have elapsed.*)

That no previous application for the relief herein sought has been made to any court or judge.

Affidavit

WHEREFORE your deponent asks that an order be granted requiring the plaintiff herein to appear before a referee and then and there submit to an oral and physical examination in accordance with the provisions of the order hereto annexed, and further requiring that the plaintiff and his attorney be stayed from taking any and all proceedings in this action until the confirmation by this Court of the report of the referee herein.

(DANIEL BOON.)

Sworn to before me, this }
(29th) day of (September, 1916.) }

(HENRY JONES,)

Notary Public,

(New York) County.

NOTICE OF TRIAL

Notice of trial served before case is at issue is absolutely void so that objection to it is not waived by retention. But if the service of the notice of trial is not void, but irregular, the notice should be returned promptly with a statement of the reasons for so doing. A motion will not lie to compel a party to accept service of a notice of trial, but if the service is proper the party should proceed under it.

The Court may impose conditions, *e. g.*, that the case retain its original date of issue upon granting order permitting service of a pleading which creates new issues, but when no such condition is imposed and new issues are thus created, a new notice of trial must be served and a new note of issue filed. Otherwise the case will be stricken from the calendar. As to practice where leave is granted to serve a new pleading upon reversal on appeal after decision involving prior pleading, see *Ward v. Smith*, 103 App. Div. 375.

Where there are two causes with the same title, the notice of trial must distinguish by number or otherwise, which is meant to be indicated.

No new notice of trial is necessary when a case is reversed on appeal and a new trial ordered.

A notice of trial is premature if served on the last day to answer and before service of the answer. Irregularity in serving notice of trial is waived by retaining notice.

Notice of trial must be served after the cause is at issue and not less than *fourteen* days before the first day of the term for which the cause is noticed. If served by mail, the notice must be served not less than *sixteen* days before the first day of the term including the day of service. In the City Court of the City of New York, a cause may be noticed for trial on any day of the term and *five* days' notice of trial must be given.

In New York and Bronx Counties the County Clerk's Index Number and year should appear on the notice of trial.

"The Court in its discretion, may order one or more issues to be separately tried prior to any trial of the other issues in the case." (§ 973, Code.)

"In the counties of New York, Kings, Bronx, Queens, Nassau,

Plaintiff, Trial Term

Richmond, Albany, Erie, Niagara, Monroe, Onondaga, Schenectady, and Westchester, where a party has served a notice of trial, and filed a note of issue, for a term at which the case is not tried, it is not necessary for him to serve a new notice of trial, or file a new note of issue, for a succeeding term; and the action must remain on the calendar until it is disposed of." (§ 977, Code.) In other counties, as to necessity of filing new note of issue and serving new notice of trial consult local rules.

FORM No. 215

Plaintiff's Notice of Trial — Trial Term

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	}
Plaintiff,	
against	
(<i>JOHN DOE,</i>)	
Defendant.	}

PLEASE TAKE NOTICE, that the issues of fact in this action will be brought to trial and an inquest taken herein, at a Trial Term of this court appointed to be held in and for the County of (*New York*) at the County Court House, in the (*Borough of Manhattan, City of New York,*) on the (*first Mon-*) day of (*June, 1916*), at (*10:00*) o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated, the (*13th*) day of (*May, 1916.*)

Yours, etc.,

(*WILLIAM REILLY,*)

Attorney for Plaintiff,
Office & P. O. Address,
(*No. 27 Pine Street,*)
(*Borough of Manhattan,*)
(*City of New York.*)

To

(*EZRA WILLIAMS,*) Esq.,
Attorney for Defendant,
(*No. 15 William Street,*)
(*New York City.*)

FORM No. 216

Defendant's Notice of Trial — Trial Term

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i> ,)	}
Plaintiff,	
against	
(<i>JOHN DOE</i> ,)	}
Defendant.	

PLEASE TAKE NOTICE, that the issues of fact in this action will be brought to trial and a motion made to dismiss the complaint at a Trial Term of this Court appointed to be held in and for the County of (*New York*,) at the County Court House in the (*Borough of Manhattan, City of New York*,) on the (*first Monday*) of (*June*, 1916), at (10:00) o'clock in the forenoon of that day.

Dated, the (13th) day of (*May*, 1916.)

Yours, etc.,

(*EZRA WILLIAMS*,)
Attorney for Defendant,
Office and P. O. Address,
(*No. 15 William Street*,)
(*Borough of Manhattan*,)
(*City of New York*.)

To

(*WILLIAM REILLY*,) Esq.,
Attorney for Plaintiff,
(*No. 27 Pine Street*,)
(*New York City*.)

FORM No. 217

Plaintiff's Notice of Trial — Special Term

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	} Plaintiff,
against	
(<i>JOHN DOE,</i>)	
Defendant.	

PLEASE TO TAKE NOTICE, that the issues of fact and law in this action will be brought to trial and an inquest taken herein at a Special Term of this Court appointed to be held in and for the County of New York, at the County Court House in the (*Borough of Manhattan, City of New York*) on the (*first Monday*) of (*May*) next, at (10:15) o'clock in the forenoon of the same day.

Dated, the (13th) day of (*April*, 1916.)

Yours, etc.,

(*WILLIAM REILLY,*)

Attorney for Plaintiff,
Office and P. O. Address,
(*No. 27 Pine Street,*)
(*Borough of Manhattan,*)
(*City of New York.*)

To

(*EZRA WILLIAMS,*) Esq.,
Attorney for Defendant,
(*No. 15 William Street,*)
(*New York City.*)

Defendant, Special Term

FORM No. 218**Defendant's Notice of Trial — Special Term**

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	} Plaintiff,
against	
(<i>JOHN DOE,</i>)	} Defendant.

PLEASE TAKE NOTICE, that the issues of fact and law in this action will be brought to trial and a motion made to dismiss the complaint at a Special Term of this Court appointed to be held in and for the County of (*New York,*) at the County Court House, in the (*Borough of Manhattan, City of New York,*) on the (*first Monday*) of (*May, 1916,*) at (10:15) o'clock in the forenoon of that day.

Dated, the (13th) day of (*April, 1916.*)

Yours, etc.,

(*EZRA WILLIAMS,*)
Attorney for Defendant,
Office & P. O. Address,
(*No. 15 William Street,*)
(*Borough of Manhattan,*)
(*City of New York.*)

To

(*WILLIAM REILLY,*) Esq.,
Attorney for Plaintiff,
(*No. 27 Pine Street,*)
(*New York City.*)

Plaintiff, City Court, City of New York

FORM No. 219**Plaintiff's Notice of Trial (City Court, City of New York)****CITY COURT OF THE CITY OF NEW YORK,**

(*THOMAS ASHLEY,*)

Plaintiff,

against

(*CARL CLEMENS,*)Defendant.

PLEASE TO TAKE NOTICE, that the issues of fact in this action will be brought to trial and an inquest taken herein at a Trial Term of the City Court of the City of New York, appointed to be held at the Court House thereof, No. 32 Chambers Street, Borough of Manhattan in the City of New York, on the (*seventeenth*) day of (*October, 1916,*) at 9:45 o'clock in the forenoon of that day.

Dated, the (*12th*) day of (*October, 1916.*)

Yours, etc.,

(*JOHN F. HARRISON,*)Attorney for (*Plaintiff,*)

Office & P. O. Address,

200 *Fifth Avenue,*(*New York City.*)

To

(*ISAAC A. EDWARDS,*) Esq.,

Attorney for Defendant.

REVIVAL OF ACTION

FORM No. 220

Order Continuing Action — Entered on Consent

At a Special Term (*Part II*) of the Supreme Court,
held in and for the County of (*New York*,) at
the County Court House in (*the Borough of
Manhattan, City of New York*,) on the (*7th*)
day of (*February*, 1916.)

PRESENT:

Hon. (*LEONARD A. GIEGERICH*,)
Justice.

(*WILLIAM HILDEBRAND*,)
Plaintiff,

against

(*HARRIET ENGEL*,)
Defendant.

On reading and filing the affidavits of (*Arthur Kenney*) and (*Marion Hildebrand*) both duly verified (*February 6*, 1916,) showing the death of (*William Hildebrand*,) the plaintiff in the above-entitled action and the granting of letters testamentary pursuant to and by virtue of his last will and testament, to (*Margaret Hildebrand*) and (*William Kenney*) by the Surrogate of (*New York*) County, and on the pleadings heretofore filed herein and on motion of (*Thaddeus Browne*,) attorney for said (*Margaret Hildebrand*) and (*William Kenney*,) the attorney for the defendant herein consenting thereto:

ORDERED, that this action be and the same hereby is continued in the name of said (*Margaret Hildebrand*) and (*William Kenney*,) as executors of the last will and testament of the said (*William Hildebrand*,) deceased, and

Notice of Motion

FURTHER ORDERED, that such continuance and substitution be without prejudice to any proceedings heretofore undertaken in this action.

Enter,
(L. A. G.)
J. S. C.

I hereby consent to the entry of the above order and the substitution therein made.

Dated, (*New York, February 5, 1916.*)

(*HENRY HALFF,*)

Attorney for (*Defendant.*)

FORM No. 221

Notice of Motion for Substitution of Party Plaintiff and Continuance
of Action

SUPREME COURT,
(*New York*) County.

(*WILLIAM HARRIS,*)
Plaintiff,

against

(*PHILIP MOON,*)
Defendant.

Sir:

TAKE NOTICE that upon the affidavit of (*Oliver Harris,*) hereto annexed, duly verified (*February 24, 1916,*) and upon the pleadings and proceedings had herein, the undersigned will move this Court at a Special Term, (Part I) thereof, to be held at the County Court House, in the (*Borough of Manhattan, City of New York,*) on the (*7th*) day of (*March, 1916,*) at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order directing the substitution of (*Oliver Harris,*) as executor of (*William Harris,*) deceased, plaintiff herein, in the place of said deceased plaintiff, and the continuance of this action in the name of said (*Oliver Harris,*) as executor of (*William Harris,*) deceased, as plaintiff herein; and that such substitution and con-

Affidavit on Motion

tinuance be without prejudice to any proceedings heretofore had in this action; and for such other and further relief as may appear just.

(MILTON J. SAVAGE,)

Attorney for (*Oliver Harris,*)

Executor of (*William Harris,*) Deceased,

(27 *William Street,*

Borough of Manhattan,

City of New York.)

To

(THOMAS MULLEN,) Esq.,

Attorney for (*Defendant,*)

(141 *Broadway,*

Borough of Manhattan,

City of New York.)

FORM No. 222

Affidavit on Motion for Substitution of Party Plaintiff and Continuance of Action *

SUPREME COURT,

(*New York*) County.

(WILLIAM HARRIS,)

Plaintiff,

against

(PHILIP MOON,)

Defendant.

STATE OF NEW YORK, } ss.:

County of (*New York*),

(*OLIVER HARRIS,*) being duly sworn, says:

I. That he is the executor under the last will and testament of (*William Harris,*) plaintiff in this action, now deceased.

II. That this action was commenced on or about the (10th) day of (*November, 1915,*) by the service of a summons and complaint upon the defendant herein, and is brought to foreclose a

* When affidavit is made by attorney for executor of deceased party it must state that he has authority to make the motion. (123 *App. Div.* 411.)

Affidavit on Motion

mortgage upon certain real property of the defendant, (*Philip Moon,*) situated in the (*City and*) County of (*New York*).

III. That on or about the (*30th*) day of (*November, 1915,*) issue was joined herein by the service of an answer, and thereafter, and on or about the (*16th*) day of (*December, 1915,*) this cause was duly noticed for trial by plaintiff and duly placed upon the calendar of this Court and is still pending undetermined, and that the next term at which it could be tried is to be held on the (*1st*) day of (*April*) next.

IV. That thereafter and on or about the (*18th*) day of (*December, 1915,*) said plaintiff, being then the sole plaintiff herein, died, leaving a will by which he appointed deponent, who resides in (*New York*) County, his executor. That said will was duly admitted to probate on or about the (*18th*) day of (*January, 1916,*) by the Surrogate of the County of (*New York,*) and that letters testamentary thereon have been issued to said executor by said Surrogate, and he has undertaken the execution thereof and now is such executor, and as such executor has authorized the making of this motion.

(*OLIVER HARRIS.*)

Sworn to before me, this }
(*24th*) day of (*February, 1916.*) }

(*WILLIAM J. KUNZ,*)

Notary Public,
(*New York*) County.

Order

FORM No. 223

Order Substituting Party Plaintiff and Continuing Action

At a Special Term (*Part I*) of the Supreme Court,
held in and for the County of (*New York*), at
the County Court House in the (*Borough of*
Manhattan, City of New York), on the (*5th*)
day of (*March*, 1916.)

PRESENT:

Hon. (*JOHN FORD*),
Justice.

(<i>WILLIAM HARRIS</i>),	}
Plaintiff,	
against	
(<i>PHILIP MOON</i>),	
Defendant.	

On reading and filing the notice of motion of (*Oliver Harris*), as executor of (*William Harris*), deceased plaintiff herein, dated the (*25th*) day of (*February*, 1916,) and the affidavit of (*Oliver Harris*) duly verified the (*24th*) day of (*February*, 1916,) and upon the pleadings and proceedings had in this action; and upon hearing (*Milton J. Savage*), attorney for said (*Oliver Harris*), as executor, in support of said motion, and (*Thomas Mulry*), attorney for the defendant, in opposition thereto;

Now, on motion of (*Milton J. Savage*), attorney for (*Oliver Harris*), executor of deceased plaintiff, it is

ORDERED, that said motion be, and the same hereby is granted, and that (*Oliver Harris*), as executor of the last will and testament of (*William Harris*), deceased plaintiff herein, be substituted in the place of said (*William Harris*), that this action be, and the same is hereby continued in the name of said (*Oliver Harris*), as executor of the last will and testament of (*William Harris*), deceased; and that such substitution and continuance be without prejudice to any proceedings heretofore had in this action.

Enter,
(*J. F.*),
J. S. C.

Order to Show Cause

FORM No. 224

Application for Order of Substitution of Party Plaintiff and Continuance of Action — Order to Show Cause

SUPREME COURT,
(*New York*) County.

(<i>WILLIAM HILDEBRAND,</i>)	}
Plaintiff,	
against	
(<i>HARRIET ENGEL,</i>)	
Defendant.	

Upon the annexed affidavit of (*William Kenney,*) duly verified the (4th) day of (*February, 1916,*) and on the pleadings herein.

LET (*Harriet Engel,*) defendant herein, or her attorney, show cause before one of the justices of this Court, at a Special Term (*Part I*) thereof, to be held in the County Court House in the (*Borough of Manhattan, City of New York*) on the (12th) day of (*February, 1916,*) at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be granted herein directing the substitution of (*Margaret Hildebrand*) and (*William Kenney*) as the executors as aforesaid, in the place of said deceased plaintiff, and continuing the action without prejudice to the proceedings already had, and why such other and further relief should not be granted as may be just.

Service of this order shall be sufficient if made upon said (*Harriet Engel,*) or her attorney, on or before the (10th) day of (*February, 1916.*)

(LEONARD A. GIEGERICH,)

J. S. C.

(*New York, February 4, 1916.*)

Affidavit on Motion

FORM No. 225

Affidavit on Motion to Revive Action *

SUPREME COURT,
(*New York*) County.

(<i>WILLIAM HILDEBRAND,</i>)	}
Plaintiff,	
against	
(<i>HARRIET ENGEL,</i>)	
Defendant.	

City, County and }
State of New York, } ss.:

(*William Kenney,*) being duly sworn, says:

I. That he is one of the executors of (*William Hildebrand,*) plaintiff in this action, now deceased.

II. That this action was commenced on or about the (4th) day of (*October, 1915,*) by the service of a summons and complaint upon defendant herein, and is now brought to foreclose a mortgage upon certain real property of the defendant (*Harriet Engel,*) situated in the (*City and*) County of (*New York.*)

III. That on or about the (21st) day of (*October, 1915,*) issue was joined herein by the service of an answer; and thereafter and on or about the (3rd) day of (*November, 1915,*) this cause was duly noticed for trial by plaintiff and duly placed upon the calendar of this Court and is still pending undetermined, and that the next term at which it could be tried is to be held on the (1st) Monday of (*March*) next.

IV. That thereafter, and on or about the (14th) day of (*November, 1915,*) said plaintiff, being then the sole plaintiff herein, died, leaving a will, by which he appointed (*Margaret Hildebrand*) and (*William Kenney,*) his executors, both residing in New York County. That said will was duly admitted to probate on or about the (18th) day of (*December, 1915,*) by the surrogate of the county of (*New York,*) and that letters testamentary thereon have been issued to said executors by

* When affidavit on motion to revive action is made by attorney for executor of deceased, he must show he is authorized to move. (123 App. Div. 411.)

Order

said surrogate, and they have undertaken the execution thereof, and now are such executors.

V. That it is now desired to amend the summons, complaint and notice of pendency of this action, and all the papers herein, by substituting the above-named (*Margaret Hildebrand*) and (*William Kenney*,) as executors of (*William Hildebrand*,) deceased, in the place of said deceased plaintiff, without prejudice to the proceedings already had, and asking for such other and further relief as may be just.

VI. That no previous application has been made for the order asked for herein.

(*WILLIAM KENNEY*.)

Sworn to before me, this }
(4th) day of (*February*, 1916.) }
(*GUSTAVE PAUL*,)
Commissioner of Deeds,
(*City of New York*.)

FORM No. 226

Order of Substitution and Continuance

At a Special Term, (Part I) of the Supreme Court,
County of (*New York*), held at the County
Court House (*Borough of Manhattan, City of*
New York) on the (12th) day of (*February*,
1916.)

PRESENT:

Hon. (*LEONARD A. GIEGERICH*,) Justice.

(<i>WILLIAM HILDEBRAND</i> ,)	}
Plaintiff,	
against	
(<i>HARRIET ENGEL</i> ,)	}
Defendant.	

Upon reading and filing the notice of motion herein, dated (*February 4*, 1916,) and the affidavit of (*William Kenney*,) thereto annexed, verified (*February 4*, 1916,) and upon the pleadings and proceedings in this action, and upon hearing (*Julius*

Order

Brough, Esq.,) attorney for the executors of (*William Hildebrand,*) deceased plaintiff, in support of said motion, and (*Henry Kopf, Esq.,*) attorney for the defendant herein in opposition thereto, now, on motion of said (*Julius Brough,*) attorney for executors of (*William Hildebrand,*) deceased plaintiff.

ORDERED, that (*Margaret Hildebrand*) and (*William Kenney,*) as the executors under the last will and testament of (*William Hildebrand,*) deceased plaintiff herein, be and they hereby are substituted as parties plaintiff in the place of said (*William Hildebrand*) in this action, and that this action be and it hereby is continued without prejudice to the proceedings already had.

Enter,
(*L. A. G.,*)
J. S. C.

FORM No. 227

Order Reviving Action

At a Special Term of the Supreme Court, (*Part I*) thereof, held in and for the County of (*New York.*) at the County Court House in (*the Borough of Manhattan, City of New York,*) on the (*7th*) day of (*March, 1916.*)

PRESENT:

Hon. (*LEONARD A. GIEGERICH,*)

Justice.

(*GEORGE BURROSE,*)

Plaintiff,

against

(*JOHN ENDEN,*)

Defendant.

On reading and filing the [recite moving papers] hereto annexed, showing the death of (*John Enden,*) the defendant in the above-entitled action, and the granting of letters testamentary pursuant to and by virtue of his last will and testament to (*William*

 Notice of Motion

Howe,) by the Surrogate of (*New York*) County, and the pleadings heretofore filed herein, and on motion of (*George Gorman*,) attorney for plaintiff herein, it is

ORDERED, that this action be and the same hereby is continued against and in the name of said (*William Howe*) as sole executor of the last will and testament of the said (*John Enden*,) deceased, and that the summons and pleadings be amended so as to make said executor the party defendant in this action; and further

ORDERED, that such continuance and substitution be without prejudice to any proceedings heretofore undertaken in this action. That plaintiff have leave to file and serve a supplemental complaint herein, alleging such of the matters stated in said affidavit and such other matters as he may be advised, and that a supplemental summons issue herein directed to the said (*William Howe*) as such executor, requiring him to answer the original and such supplemental complaint.

Enter,
 (L. A. G.,)
 J. S. C.

 FORM No. 228

**Notice of Motion for Substitution of representative of Sole Party
 Defendant and Continuance of Action**

SUPREME COURT,
 (*New York*) County.

(<i>GEORGE BURROSE</i> ,)	}
Plaintiff,	
against	
(<i>JOHN ENDEN</i> ,)	}
Defendant.	

Sir:

PLEASE TAKE NOTICE, that upon the affidavit of (*James Lord*,) verified the (24th) day of (*February*, 1916,) hereto annexed, and upon all pleadings and proceedings herein, the undersigned will move this Court at a Special Term, (*Part I*)

Notice of Motion

thereof, to be held at the County Court House, in (*the Borough of Manhattan, City of New York*), on the (7th) day of (*March, 1916*), at (10:30) o'clock in the forenoon or as soon thereafter as counsel can be heard for an order directing the substitution of (*William Howe*), as executor of the last will and testament of (*John Enden*), deceased defendant herein, in the place of said deceased defendant, the continuance of this action in the name of said (*William Howe*), as such executor, as defendant herein; that such substitution and continuance be without prejudice to any proceedings heretofore undertaken in this action, and for such other and further relief as to the Court may seem just and proper.

Dated, (*New York, February 25, 1916*.)

Yours, etc.,

(*GEORGE GORMAN*),

Attorney for (*Plaintiff*),

(*27 William Street*),

(*Borough of Manhattan*),

(*City of New York*.)

To:

(*WILLIAM HOWE*),

Executor of (*John Enden*), deceased,

(*141 Broadway*),

(*New York City*.)

FORM No. 229

Affidavit on Motion for Substitution of Representative of Sole Party
Defendant and Continuance of ActionSUPREME COURT,
(*New York*) County.

(<i>GEORGE BURROSE,</i>)	} Plaintiff,
against	
(<i>JOHN ENDEN,</i>)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:(*JAMES LORD,*) being duly sworn, says:

1. That he is (*a clerk in the office of*) the attorney for the plaintiff in the above-entitled action.

2. That this action was commenced by the service of a summons and complaint upon the defendant herein on or about the (*10th*) day of (*November, 1915,*) to recover (*ten thousand dollars*) damages for breach of contract (*to deliver to plaintiff fifty (50) tons of steel rails*) as contained in agreement dated (*August 12, 1915,*) between said plaintiff and defendant and embodied in the complaint verified (*November 20, 1915,*) duly served upon defendant and now on file in the office of the clerk of (*New York*) County.

3. That on or about the (*30th*) day of (*November, 1915,*) issue was joined herein by the service of an answer and thereafter on or about the (*16th*) day of (*December, 1915,*) this cause was duly noticed for trial by plaintiff and duly placed upon the Trial Calendar of this Court, No. (2), and is still pending, and that the next term at which it could be tried is to be held on the (*1st*) Monday of (*April*) next.

4. That thereafter, on or about the (*12th*) day of (*December, 1915,*) deponent is informed and believes, said defendant being then the sole defendant herein, died, leaving a will by which he appointed (*William Howe*) of (*316 West 53d Street, Borough*

Consent

of *Manhattan, City of New York*,) his executor. That said will was admitted to probate on or about the (12th) day of (*January*, 1916,) by the Surrogate of the County of (*New York*,) and that letters testamentary thereon have been issued to such executor by said Surrogate, and he has undertaken the execution thereof, and now is such executor.

(*JAMES LORD*.)

Sworn to before me, this }
(24th) day of (*February*, 1916.) }

(*JAMES DREW*,)

Notary Public,
(*New York*) County.

Substitution of Attorneys — Discontinuance

FORM No. 230

Consent to Substitution of Attorneys

SUPREME COURT,
(*New York*) County.

(<i>JAMES BURKE</i> ,)	} Plaintiff,
against	
(<i>MILES BRYAN</i> ,)	
Defendant.	

It is hereby stipulated and consented that Messrs. *Jones & Dobbs*) be substituted as attorneys for the (*plaintiff James Burke*) herein, in place of (*John J. Ryan*), and that an order may be entered to that effect without further notice

Dated, (*New York*, April 30, 1916.)

(*JOHN J. RYAN*,)

Attorney for (*Plaintiff*.)

(*WILLARD BARRETT*,)

Attorney for defendant (*Miles Bryan*.)

(*JAMES BURKE*.)

Order

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

On this (*30th*) day of (*April*, 1916,) before me personally appeared (*James Burke*,) to me personally known and known to me to be the plaintiff in the above-entitled action, and he duly acknowledged that he had executed the foregoing consent to substitution of attorneys.

(*JOHN BROWN*,)

Notary Public,
 (*New York*) County,
 No. (75.)

FORM No. 231

Order of Substitution on Consent (for New York County)

At a Special Term, (*Part II*) of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House, in the Borough of Manhattan, City of New York on the (*second*) day of (*May*, 1916).

PRESENT:

Hon. (*JOHN C. CLARK*,)
 Justice.

(*JAMES BURKE*,)
 Plaintiff,

vs.

(*MILES BRYAN*,)
 Defendant.

Upon the annexed consent and upon motion of (*John J. Ryan*,) attorney for the plaintiff, it is

ORDERED that (*Jones & Dobbs*) be, and they hereby are, substituted as attorneys for the (*plaintiff*) in this action in place of (*John J. Ryan*.)

Enter:

(*J. C. C.*)
J. S. C.

Order on Consent

FORM No. 232

Order of Substitution on Consent (Outside of New York County)

SUPREME COURT,
(*Westchester*) County.

(*JAMES BURKE,*)

Plaintiff,

vs.

(*MILES BRYAN,*)

Defendant.

Upon the annexed consent and on motion of (*John J. Ryan,*) attorney for the plaintiff, it is

ORDERED that (*Jones & Dobbs*) be, and they hereby are, substituted as attorneys for the (*plaintiff*) in this action in place of (*John J. Ryan.*)

Dated, (*White Plains, N. Y., May 2, 1916.*)

(*MARTIN J. KEOGH,*)

Justice of the Supreme Court.

FORM No. 233

Consent to Discontinuance

SUPREME COURT,
(*New York*) County.

(*JAMES BURKE,*)

Plaintiff,

vs.

(*MILES BRYAN,*)

Defendant.

The matters in controversy in this action having been compromised, settled, and adjusted, it is hereby stipulated and consented by and between the attorneys for the respective parties hereto, that the above-entitled action be discontinued without costs

Order

to either party as against the other, and that an order discontinuing this action without costs may be entered without further notice to either party.

Dated, (*New York, April 15, 1916*).

(*JOHN J. RYAN,*)

Attorney for Plaintiff.

(*WILLARD BARRETT,*)

Attorney for Defendant (*Miles Bryan.*)

FORM No. 234

Order of Discontinuance on Consent (New York County)

At a Special Term, (*Part II*) of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House, in the (*Borough of Manhattan, City of New York,*) on the (*2d*) day of (*May, 1916*).

PRESENT:

Hon. (*JOHN FORD,*)

Justice,

(*JAMES BURKE,*)

Plaintiff,

vs.

(*MILES BRYAN,*)

Defendant.

The matters in controversy having been settled, compromised and adjusted, it is

ORDERED, that the above entitled action be, and the same hereby is, discontinued without costs to either party as against the other.

Enter:

(*J. F.*)

J. S. C.

Order on Consent

We hereby consent to the entry of the above order.

Dated, (*New York, May 2, 1916.*)

(*JAMES FOX,*)

Attorney for Plaintiff.

(*JOHN COX,*)

Attorney for Defendant.

FORM No. 235

Order of Discontinuance on Consent (Counties Other Than New York)

SUPREME COURT,
(*Westchester*) County.

(*JAMES BURT,*)

Plaintiff,

vs.

(*JOHN BRYAN,*)

Defendant.

Upon the annexed consent and upon the motion of (*Willard Barrett*), attorneys for the defendant, it is

ORDERED, that this action be, and the same hereby is, discontinued without costs to either party as against the other.

Dated, (*White Plains, New York, May 15, 1916.*)

(*MARTIN J. KEOGH,*)

Justice Supreme Court.

NOTES OF ISSUE

FORM No. 236

Note of Issue of Fact

SUPREME COURT,
(New York) County.

(JOHN DOE,)

Plaintiff,

against

(DAVID ROE,)

Defendant.

*Issue of fact to be
tried by court and
jury.*

(CHARLES J. JONES), Plaintiff's Attorney.

(WILLIAM P. SMITH), Defendant's Attorney.

Issue joined on (June 4, 1915),¹ by service of (name the last pleading which presents the issues to be tried.)

Note filed by (plaintiff).²

Nature and object of action,³ *action to recover broker's commissions.* Cause should be placed on calendar No. 2.⁴

Noticed for trial for (October) Term (1916).⁵

¹ Date last pleading was served.

² By whom filed.

³ Here state what the action is for.

⁴ See Rule 1, Supreme Court, 1st Judicial Dist. Trial Term. All tort actions except actions in ejectment and replevin and to recover damages for the conversion of personal property are placed on Calendar No. 1. All other actions are placed on Calendar No. 2.

⁵ Term for which case was noticed for trial. Where there are two or more causes having the same title, the note of issue must distinguish which is the designated, e. g., Action No. 1, Action No. 2, etc.

⁶ In New York and Bronx counties add county clerks' index number and year.

FORM No. 237

SUPREME COURT,
(*New York*) County.

(*JOHN DOE*),

Plaintiff,

against

(*WILLIAM ROE*),

Defendant.

*Issue of law to be
tried by court with-
out jury.*

(*CHARLES J. JONES*), Plaintiff's Attorney.

(*WILLIAM P. SMITH*), Defendant's Attorney.

Issue joined on (*June 4, 1916*),¹ by service of (*name the last pleading which presents the issues to be tried*) (*plaintiff's reply*).

Note filed by (*plaintiff*).²

Nature and object of action,³ *action to reform a written instrument.*

Noticed for trial for (*October*) Term (1916).⁴

¹ Date of service of last pleading.

² By whom notice is filed.

³ Here state what action is for.

⁴ Term for which case noticed for trial. In New York and Bronx counties, add county clerks' index number, and year.

 Undefended Matrimonial Action

FORM No. 238**Note of Issue of Undefended Matrimonial Action**

SUPREME COURT,
(*New York*) County.

(*JANE DOE*),

Plaintiff,

against

(*JOHN DOE*),

Defendant.

*Here insert County
Clerk's file number
in N. Y. Co.*

Action for absolute divorce or (*annulment*.)

Summons and complaint served (*January 19, 1915.*)

Summons and complaint filed (*January 21, 1916.*)

Noticed for March Term.

(*RICHARD ROE*), Plaintiff's Attorney.

Note.—Affidavit of Regularity containing Plaintiff's residence, street and number must accompany Note of Issue.

Note of Issue — For Motion
NEW YORK COUNTY

No note of issue is now required to be filed in Special Term, Part I.

"Motions may be noticed for any day during the term. The clerk of Special Term, Part I, shall make up a calendar for each day. The order to show cause or notice of motion, with proof of service thereof, must be filed with the clerk before the date on which the motion is noticed to be heard, except where an order to show cause is granted returnable in less than two days, when the clerk at any time before the day for hearing may place the motion on the calendar, or the justice assigned to said part of the court may place the motion on the calendar on the day upon which the order to show cause is returnable. This calendar will be called at the opening of the court and no motion will be heard that is not upon the calendar." (*Rule II, New York County, Supreme Court, Special Term Rules.*)

Motion

FORM No. 239

Note of Issue — For Motion

SUPREME COURT,
(*Kings*) County.

(*JAMES THOMPSON*),

Plaintiff,

against

(*FRANK WILSON*) and (*JEREMIAH HART*),

Defendants.

Motion by (*plaintiff*)¹ (*for receiver.*)²

Returnable Special Term, Part I, (*March 18, 1916.*)³

(*Julius Mann*,) for (*plaintiff* ⁴ and the motion.)⁵

(*Thomas Jones*,) opposed.

Note of issue filed by (*plaintiff.*)⁶

¹ State which party.

² Nature of motion.

³ Date returnable.

⁴ State which party.

⁵ For the motion or opposed.

⁶ State which party.

CALENDAR PRACTICE (NEW YORK COUNTY)

In the County of New York the enormous amount of judicial business transacted necessitates a far more complicated calendar practice than in any other part of the State and therefore considerable space is here given to this subject.

Many experiments have been suggested and tried, but only slight permanent improvement has been made by each change. On September 1, 1916, many changes went into effect, the most important being the return to a system similar to the old Friday Call Calendar and the innovation of the Day Calendar being required to be called at 3:30 p. m. *in Parts III and XIV.*

Actions for goods sold and delivered are now entitled *ipso facto* to be placed on the Special Calendar and special issues directed to be tried heretofore entitled to go on the Special Calendar now go regularly on the Calendar No. 2 and are placed on Trial Term, Part XIV, Day Calendar.

All the forms contained herein are believed to be in full accord with the new rules which went into effect September 1, 1916.

GENERAL CALENDAR

There are two general calendars:

General Calendar No. 1, commonly called "Tort Calendar."

General Calendar No. 2, commonly called "Contract Calendar."

No. 1 consists of:

(a) All *Tort Actions* except

1. Ejectment.
2. Replevin.
3. Damages for the conversion of personal property.

No. 2 consists of:

All other actions.

It follows that when the note of issue is filed it must specify on which calendar the action is to be placed.

Trial Term, New York County

. With the exception of a few specifically hereinafter mentioned cases, all motions or applications in regard to the calendars are made to the Justice holding Part III in regard to Calendar No. 1 and to the Justice holding Part XIV in regard to Calendar No. 2.

The *exceptions* are to be found in Trial Term Rules 3, 5, 6 and 7, and are as follows:

- (a) Preferred claims under § 791, Code.

This application is made in Part II.

- (b) All questions of fact ordered to be tried by jury; all issues and questions of fact in special proceedings and all issues and questions of fact which have been stated for trial in pursuance of §§ 970 and 971, Code.

- (c) To place on the Special Calendar or for short causes.

This application is made to Part II.

- (d) Cases mentioned in Rule 7.

The note of issue having been filed, the case first appears in a list of cases published in the *N. Y. Law Journal* ten days before the first Monday of a term and then either side may file "ready" notice with the Clerk and serve same on opponent or either party may file affidavits asking for postponement or that the case be reserved generally.

If both parties file "ready" notices or one party does and the other party does not apply for postponement, the case will be placed on the Ready Calendar and will next appear on a Friday Call Calendar at 2 P. M., at which time it will be set down for a day certain in the following week, and will then next appear on the Day Calendar at 3:30 P. M. in Parts III and XIV, and if marked "Ready" at that time, will appear the following morning at 10 A. M. in the particular Part to which it had been sent the previous afternoon and be tried when reached in its order.

This is only a skeleton outline and does not obviate the necessity of consulting the precise language of the rules.

The County Clerk's index number and year should appear on all calendar motion papers.

In filing calendar motion papers with the Clerk see that proof of proper service is filed therewith in all proper cases.

Since in New York County the decision on Calendar motions is almost always entered by the Clerk on a short form order, it has been deemed unnecessary to print herein the long or old form order.

Ready Notice

FORM No. 240

Ready Notice*

SUPREME COURT,
(*New York*) County.

(JOHN DOE,)

Plaintiff,

against

(RICHARD ROE,)

Defendant.

No. (5731) on Gen-
eral Calendar No.
(2).

This cause, No. (5731) on General Calendar No. (2) of this Court, having been published in the *New York Law Journal* as provided by Rule 1 of the Rules of Supreme Court, First Judicial District, Trial Term, I hereby serve notice on the Calendar Clerk and on the attorney for the (*plaintiff*) that this cause is to be marked ready for trial.

Dated, (*New York, September 25, 1916.*)

Yours, etc.,

(JAMES FOX,)

Attorney for (*Defendant*),

Office & P. O. Address,

(2 *Rector Street*),(*Borough of Manhattan*),(*New York City*.)

To

The Trial Term Calendar Clerk,

(WILLIAM SMITH,)

Attorney for (*Plaintiff*),(32 *Nassau Street*),(*New York City*.)

* This notice may be served by any party to the cause, but must be served before four o'clock *Tuesday* afternoon.

Postponement After Ready Notice

FORM No. 241

Motion for Postponement After Ready Notice*

SUPREME COURT,
(*New York*) County.

(*JOHN DOE*),

Plaintiff,

against

(*RICHARD ROE*),

Defendant.

No. (5731) on General Calendar No. (2).

Sir:

PLEASE TAKE NOTICE that upon the annexed affidavits of (*John Bird*), verified (September 27, 1916), and of (*James Smith*), verified (September 27, 1916), and the notice of the (*defendant*) herein, dated (*September 26*, 1916), that this cause is to be marked ready, heretofore served upon (*plaintiff*), and upon all the pleadings and proceedings herein, the undersigned will apply to this court at a Trial Term, Part (*XIV*) thereof, to be held in and for the County of New York, at the County Court House, Borough of Manhattan and City of New York, on (*Friday*), the (*29th*) day of (*September*, 1916), at (10:00) o'clock in the forenoon of said day or as soon thereafter as counsel can be heard for a postponement of this cause, No. (5731) on General Calendar No. (2) of this court on the following grounds:

[here specify grounds]

and that said cause remain on the Trial Calendar No. (2) of this

* This notice and the affidavits and exhibits must be served upon the attorneys for the other parties not later than 12 o'clock Wednesday noon and must be filed together with proof of such service with the Calendar Clerk before 4 o'clock Wednesday afternoon.

Opposing affidavits and exhibits may be served, in which case they must be filed with the Calendar Clerk together with proof of service on opponent not later than 4 o'clock, Thursday afternoon.

This motion in causes on General Calendar No. 1 is made returnable in Trial Term, Part 3; in causes on General Calendar No. 2 in Trial Term Part 14.

Application to Reserve Generally

Court, and for such other and further relief as to the Court may seem just and proper.

Dated, (*New York, September 27, 1916.*)

Yours, etc.,

(*WILLIAM SMITH,*)

Attorney for (*Plaintiff,*)

(*32 Nassau Street,*)

(*Borough of Manhattan,*)

(*City of New York.*)

To

The Trial Term Calendar Clerk,

(*JAMES FOX,*) Esq.,

Attorney for (*Defendant,*)

(*2 Rector Street,*)

(*New York City.*)

Indorsement, (if argument is desired): “For Argument.”

FORM No. 242

Notice of Motion to Have Cause Reserved Generally —After Ready Notice*

SUPREME COURT,
(*New York*) County.

(*JOHN DOE,*)

against Plaintiff,

(*RICHARD ROE,*)

Defendant.

Sir:

PLEASE TAKE NOTICE that upon the annexed affidavits of (*John Bird,*) verified (*September 27, 1916,*) and of (*James*

* This notice and the affidavits and exhibits must be served upon the attorneys for the other parties not later than 12 o'clock *Wednesday* noon and must be filed together with proof of such service with the Calendar Clerk before 4 o'clock *Wednesday* afternoon.

Opposing affidavits and exhibits may be served, in which case they must be filed with the Calendar Clerk, together with proof of service on opponent not later than 4 o'clock, *Thursday* afternoon.

This motion in causes on Calendar No. 1 is made returnable in Part 3, in causes on Calendar No. 2 in Part 14.

Application to Reserve Generally

Smith,) verified (*September 27, 1916,*) and the notice of the (*defendant*) herein, dated (*September 25, 1916,*) that this cause is to be marked ready, heretofore served upon the (*plaintiff,*) and upon all the pleadings and proceedings herein, the undersigned will apply to this Court at a Trial Term, Part (*XIV*) thereof, to be held at the County Court House in the Borough of Manhattan, City of New York, on (*Friday,*) the (*29th*) day of (*September, 1916,*) at (10:00) o'clock in the forenoon of said day or as soon thereafter as counsel can be heard to have this cause, No. (5731,) on General Calendar No. (2) reserved generally upon the following grounds: (*here specify grounds*) and for such other and further relief as may be proper.

Dated, New York, (*September 27, 1916.*)

Yours, etc.,

(*WILLIAM SMITH,*)

Attorney for (*Plaintiff,*)

(*32 Nassau Street,*)

(*New York City.*)

To

The Trial Term Calendar Clerk,

(*JAMES FOX,*)

Attorney for (*Defendant,*)

(*2 Rector Street,*)

(*New York City.*)

Indorsement (if argument is desired.)

“ For Argument.”

Restoring Case — After Disagreement

FORM No. 243

Notice of Motion to Restore to Day Calendar — After Jury Disagrees*

SUPREME COURT,
(*New York*) County.

(*JAMES VANCE*),

Plaintiff,

against

(*JARED DOLAN*),

Defendant.

No. (5632) on General
Calendar (No. (1).

Sir:

PLEASE TAKE NOTICE, that upon the annexed affidavit of (*James Bates*), verified the (19th) day of (*October*, 1916,) a motion will be made at Trial Term, Part (*III*) of this Court, to be held at the County Court House in the Borough of Manhattan, City of New York, on the (20th) day of (*October*, 1916,) at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order restoring the above-entitled action to the Day Calendar in Trial Term, Part (*III*), for (*October 23*, 1916.)

Dated, New York, (*October 18*, 1916.)

Yours, etc.,

(*BATES & MARSHALL*),

Attorneys for (*Plaintiff*),

(170 *Broadway*),

(*Borough of Manhattan*),

(*City of New York*.)

To (*JAMES L. BROWN*), Esq.,

Attorney for (*Defendant*),

(26 *William Street*),

(*New York City*.)

* This motion is made on two days' notice, and made returnable before Justice holding Part III if same on Calendar 1 or Part XIV if on Calendar No. 2.

Restoring Case — After Disagreement

FORM No. 244

Affidavit on Motion to Restore After Disagreement

SUPREME COURT,
(*New York*) County.

(<i>JAMES VANCE</i> ,)	} Plaintiff,
against	
(<i>JARED DOLAN</i> ,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JAMES BATES*,) being duly sworn, deposes and says that he is a member of the firm of (*Bates and Marshall*,) attorneys for the (*plaintiff*,) above named; that he conducted the trial of this cause in behalf of the (*plaintiff*) before (*Mr. Justice Guy*) and a jury sitting in Part (*VII*,) Trial Term of this Court, on the (*7th*) and (*8th*) days of (*October*, 1916,) and that the jury on said trial disagreed. The (*plaintiff*) is desirous that the cause be again set for trial and deponent therefore asks that the cause be restored to the Day Calendar. That all of (*plaintiff's*) witnesses are now available and the (*plaintiff*) is actually ready to proceed with the trial. Deponent therefore asks that this case be placed upon the Day Calendar of this court in Trial Term, Part (*III*, for *October 23*, 1916.)

(*JAMES BATES*.)

Sworn to before me, this }
(*18th*) day of (*October*, 1916.) }

(*JENNIE DOR*,)

Notary Public,
(*New York*) County.

Reserving Case Generally — By Consent

FORM No. 245

Consent to Reserve Case Generally*

SUPREME COURT,
(*New York*) County.

(<i>JAMES FRISBIE,</i>)	}	No. (5736) on General Calendar, No. (2).
Plaintiff,		
against		
(<i>WILLIAM STORM,</i>)		
Defendant.		

It is hereby consented that the above-entitled cause No. (5735) on General Calendar No. (2) of this Court be reserved generally and be so marked by the Clerk.

Dated, (*New York, September 10, 1916.*)

(*FRANK GRANT,*)

Attorney for (*Plaintiff.*)

(*EDGAR KELLOGG,*)

(Attorney for (*Defendant.*))

* Rule I Trial Term Rules N. Y. county.

Rule II Trial Term Rules Bronx county.

FORM No. 246

Consent to Restore Cause Marked "Reserved Generally" to General Calendar

SUPREME COURT,
(*New York*) County.

(JAMES FRISBIE,)

Plaintiff,

against

(WILLIAM STORM,)

Defendant.

No. (5736) on General
Calendar No. (2).

The above-entitled cause No. (5736)) on General Calendar No. (2) having been heretofore reserved generally and so marked, and younger issues having been reached in regular order,

It is hereby consented that the same be restored to the Ready Trial Calendar for the next call.

Dated, (*New York, September 21, 1916.*)

(FRANK GRANT,)

Attorney for (*Plaintiff.*)

(EDGAR KELLOGG,)

(Attorney for (*Defendant.*))

Restoring to Day Calendar — After Reversal

FORM No. 247

Notice of Motion to Restore Cause to Calendar After Reversal*

SUPREME COURT,
(*New York*) County.

(*JAMES FRISBIE*),

Plaintiff,

against

(*WILLIAM STORM*),

Defendant.

No. (5696) on General
Calendar No.(1).

Sir:

PLEASE TAKE NOTICE, that upon the affidavit of (*John Gale*,) verified the (23*d*) day of (*October*, 1916,) a copy of which is hereto annexed, and on the pleadings and proceedings herein, I will move at a Trial Term, Part (*III*) of this Court, to be held at the County Court House, Borough of Manhattan, New York City, on (*October 25th*, 1916,) at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard for an order restoring this cause to the Day Calendar in Trial Term, Part (*III*,) for the first Monday in November, and for such other and further relief as to the Court shall seem just and proper in the premises.

Dated, New York, (*October 23d*, 1916.)

Yours, etc.,

(*FRANK GRANT*),

Attorney for Plaintiff,

Office & P. O. Address,

(32 *Pine Street*),

(*Borough of Manhattan*),

(*City of New York*.)

To

(*EDWARD CASE*), Esq.,

(32 *Liberty Street*),

(*New York*.)

* Two days' notice must be given and if cause is on Calendar No. 1 motion must be made returnable at Trial Term, Part III, if on Calendar No. 2, it is returnable at Trial Term, Part XIV.

FORM No. 248

Affidavit on Motion to Restore Cause to Day Calendar After Reversal

SUPREME COURT,
(*New York*) County.

(*JAMES FRISBIE*,)
Plaintiff,

vs.

(*WILLIAM STORM*,)
Defendant.

No (5736) on General
Calendar No. (1).

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN GALE*,) being duly sworn, deposes and says that he is (*managing clerk in the office of Frank Grant*,) the attorney for the (*plaintiff*) herein; that this cause No. (5736) on General Calendar No. (1) of this Court was duly tried and appealed to the Appellate Division, and that the judgment was reversed by said Appellate Division, and a new trial ordered. That deponent has requested the attorney for (*defendant*) to consent that this cause be restored to the Day Calendar after reversal, and such consent was not granted. Deponent therefore asks that this cause be restored to Day Calendar in Trial Term, Part (*III*,) for the first (*Monday in November*,)

(*JOHN GALE*,)

Sworn to before me, this
(23d) day of (*October*, 1916.)

(*ELMER JONES*,)
Notary Public,
(*N. Y.*) Co.

FORM No. 249

Consent to Restore Cause to Ready Calendar After Reversal and a
New Trial Ordered

SUPREME COURT,
(*New York*) County.

(SCRANTON SURETY COM-
PANY,)

Plaintiff,

against

(FREDERICK WILLIAMS,)

Defendant.

No. (6200) on General
Calendar No. (2)

The judgment heretofore entered in favor of the (*plaintiff*) and against the (*defendant*) having been reversed on appeal and a new trial ordered, it is hereby consented that this cause may be restored to the Ready Calendar (*and placed on the appropriate Ready Calendar by the Calendar Clerk.*)

Dated, (*New York City, October 29, 1916.*)

(RALSON, KEENAN & O'CONNOR,)

Attorneys for (*Plaintiff,*)

(RICHARD KEARNEY,)

Attorney for (*Defendant.*)

FORM No. 250

Notice of Motion to Restore to Calendar After Withdrawal of a Juror*

SUPREME COURT,
(*New York*) County.

(*UNITED COMPANY,*)
Plaintiff,

vs.

(*JAMES N. SMITH,*)
Defendant.

No. (5678) on General
Calendar No. (2).

Sir:

PLEASE TAKE NOTICE, that upon the annexed affidavit of (*Frank Warren,*) verified the (29th) day of (*October,* 1916,) and upon all the pleadings and proceedings herein, the undersigned will move this court at Trial Term, Part (*XIV*) thereof, to be held at the County Court House, Borough of Manhattan, City of New York, on (*November 2,* 1916,) at 10:00 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, for an order restoring this cause to the Day Calendar and directing that it be set down for trial on (*November 4,* 1916,) in Trial Term, Part (*XVII,*) and for such other and further relief as to the Court may seem just and proper.

Dated, New York, (*October 29,* 1916.)

Yours, etc.,

(*CHARLES T. AMES,*)

Attorney for (*Plaintiff,*)

Office & P. O. Address,

(*31 Liberty Street,*)

(*Borough of Manhattan.*)

(*City of New York.*)

To

(*WILLIAM P MINGON,*) Esq.,

Attorney for (*Defendant,*)

(*66 Wall Street,*)

(*New York City.*)

* Two days' notice must be given. This motion may be made in the Part from which the case was sent for trial and the Justice holding such Part has power under Rule VII to restore it to the Day Calendar, or may set it down for trial before him in the "Calendar Part" (III or XIV) on a later day of the same week in which it was tried.

Restoring to Day Calendar — After Mistrial

FORM No. 251

Affidavit on Motion to Restore to Day Calendar After Juror
WithdrawnSUPREME COURT,
(*New York*) County.

(UNITED COMPANY,)

Plaintiff,

vs.

(JAMES N. SMITH,)

Defendant.

No. (5678) on General
Calendar No. (2).STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*FRANK WARREN*,) being duly sworn, says that he is (*a clerk in the office of Charles R. Ames*,) attorney for the (*plaintiff*) herein; that this cause came on for trial before Mr. Justice (*Ford*) and a jury at Trial Term, Part (*XVII*,) on the (*20th*) and (*23d*) days of (*October*, 1916,) and the (*defendant*) having made a motion for leave to withdraw a juror, the said motion was granted on condition that the defendant pay to (*plaintiff's*) attorney thirty dollars costs of trial within ten days after service upon the attorney for the (*plaintiff*) of a copy of the order granting leave to withdraw a juror and notice of the entry thereof; that said order was duly served and the said costs duly paid. (*Plaintiff*) desires an order restoring this cause to the Day Calendar in Part (*XIV for Monday, November 9*, 1916,) and such other and further relief as may be proper.

(FRANK WARREN.)

Sworn to before me, this }
(*29th*) day of (*October*, 1916.) }

(FRED SMITH,)

Notary Public,

(*New York*) County, No. (456.)

FORM No. 252

Notice of Motion to Restore to Day Calendar — After Judgment on
Inquest VacatedSUPREME COURT,
(*New York*) County.(WILLIAM R. WARREN,) }
Plaintiff,

vs.

(HARLEM CONSTRUCTION }
COMPANY,) }
Defendant.No. (3373) on General
Calendar No. (1).

Sir:

PLEASE TAKE NOTICE, that upon the annexed affidavit of (*William P. Colby*,) verified (*October 11, 1916*,) and upon all proceedings herein, the undersigned will move this Court at Trial Term, Part III, to be held at the County Court House, in the Borough of Manhattan, City of New York, on the (*13th*) day of (*October, 1916*,) at (*10:00*) o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order restoring this cause to the Day Calendar (*and that the same be placed on the Day Calendar in Trial Term, Part III, for October 23d*,) and for such other and further relief as may be just and proper.

Dated, New York, (*October 11, 1916*.)

Yours, etc.,

(WILLIAM P. COLBY,) }
Attorney for (*Plaintiff*,) }
(*259 Broadway*,) }
(*Borough of Manhattan*,) }
(*New York City*.) }

To

(JACOB J. ALBERTS,) Esq., }
Attorney for (*Defendant*,) }
(*55 Liberty Street*,) }
(*New York City*.) }

Restoring to Day Calendar — After Judgment Vacated

FORM No. 253

Affidavit on Motion to Restore to Day Calendar — After Judgment
on Inquest VacatedSUPREME COURT,
(*New York*) County.

(WILLIAM R. WARREN,)

Plaintiff,

vs.

(HARLEM CONSTRUCTION
COMPANY,)

Defendant.

STATE OF NEW YORK, ss.:
County of (*New York*),

(WILLIAM P. COLBY,) being duly sworn, deposes and says:
That he is the attorney for the (*plaintiff*) herein. That this
cause which is No. (3373) on General Calendar No. (1) of this
Court was brought to recover damages for (*personal injuries*.)
That on (*October 4, 1916*,) this action was on Day Calendar,
Part (V, and that defendant not appearing or answering, the
same was set down for the 5th day of October for inquest, and on
said 5th day of October, 1916,) inquest was duly taken, and on
(*October 6, 1916*,) a judgment was entered in favor of the (*plain-
tiff*) and against the (*defendant*) for the sum of (\$2,631.84.)

That the (*defendant*) thereafter moved to open (*its default*)
and vacate said judgment, which motion was granted by an order
duly made and entered on (*October 9, 1916*,) opening the (*de-
fendant's*) default and vacating said judgment.

That the (*plaintiff*) is ready and anxious to try this case and
respectfully asks for an order restoring the same to the Day Cal-
endar in Trial Term, Part (III,) for the (23d) day of (*October*,
1916.)

(WILLIAM P. COLBY.)

Sworn to before me, this }
(11th) day of (*October, 1916*.) }

(HENRY JAMES,)

Notary Public,

(*Kings Co.*) No. (456.)

FORM No. 254

Notice of Motion to Restore to the Ready Calendar*

SUPREME COURT,
(*New York*) County.

(*SARAH MORGAN,*)
Plaintiff,

vs.

(*MARTHA JANEWAY,*)
Defendant.

No. (5755) on General
Calendar No. (2).

Sir:

PLEASE TAKE NOTICE, that upon the annexed affidavit of (*Warren S. Bird,*) verified (*October 18, 1916,*) and upon all the pleadings and proceedings herein, the undersigned will move this Court, at Trial Term, Part (*XIV*) thereof, to be held at the County Court House, Borough of Manhattan and City of New York, on (*Monday,*) the (*21st*) day of (*October, 1916,*) at (*10:00*) o'clock in the forenoon of said day or as soon thereafter as counsel can be heard, for an order restoring this cause to Ready Calendar for the next call and for such other and further relief as to the Court may seem just and proper.

Dated, (*New York, October 18, 1916.*)

Yours, etc.,

(*WILLIAMS & JACKSON,*)
Attorneys for (*Plaintiff,*)
(*31 Liberty Street,*)
(*New York City.*)

To

(*L. P. MINGON,*) Esq.,
Attorney for (*Defendant,*)
(*30 Broad Street,*)
(*Borough of Manhattan,*)
(*New York City.*)

* Two days' notice must be given. This motion in causes on General Calendar No. 1 is made returnable in Trial Term, Part III, in causes on General Calendar No. 2 in Part XIV.

FORM No. 255

Affidavit on Motion to Restore to the Ready Calendar

SUPREME COURT,
(*New York*) County.

(*SARAH MORGAN*),

Plaintiff,

against

(*MARTHA JANEWAY*),

Defendant.

No. (5755) on General
Calendar No. (2).

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WARREN S. BIRD*), being duly sworn, says that he is (*a clerk in the office of Williams & Jackson*), attorneys for the (*plaintiff*) herein; that the (*plaintiff*) intends to prosecute this action in good faith; that this cause, No. (5755) on General Calendar No. (2) was posted and published by the Clerk pursuant to Rule 1 of the Trial Term Rules of this Court, but no notice to the effect that the cause was to be marked ready was served by either party and the cause was therefore marked reserved generally and is now upon the Reserved Generally Calendar. The failure to serve such notice on behalf of the (*plaintiff*) was not intentional, but was due to inadvertence and oversight. That it was deponent's duty, amongst other things, to look over the cases in which the firm of (*Williams & Jackson*) appear are on the Calendars, and deponent in looking over the Calendars failed to discover the above case and in consequence omitted to serve the required ready notice. That younger issues to wit: No. (5680) have been reached in regular order on this Calendar.

Deponent, therefore, respectfully asks that the above-entitled cause be restored to the Ready Calendar for the next call and for such other and further relief as may be proper.

(*WARREN S. BIRD*.)

Sworn to before me, this }
(18th) day of (*October*, 1916.) }

(*JOHN SMALL*),

Notary Public,

(*New York County*.)

Notice of Motion

FORM No. 256

Notice of Motion to Strike from General Calendar

SUPREME COURT,
(*New York*) County.

(*GERALD HULL*,) as Receiver of
(*CYRUS FIELD*,)

Plaintiff,

against

(*JOSEPH H. BRADLEY*,)

Defendant.

No. (5860) on General
Calendar No. (2).

Sirs:

PLEASE TAKE NOTICE, that upon the summons, complaint, answer and notice of trial herein, and the affidavit of (*Ralph Polk*,) verified the (29th) day of (*March*, 1916,) a copy of which is herewith served upon you, this Court will be moved at a Trial Term, (*Part XIV*) thereof, to be held at the (*New York County Court House, in the Borough of Manhattan, City of New York*,) on the (4th) day of (*April*, 1916,) at (10:00) o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, for an order striking the above-entitled action from General Calendar No. (2) of this Court, on the ground that (*the said action is brought to obtain equitable relief only and is improperly upon the said calendar*,) and for such other and further relief as may be just.

Dated, (*New York, March 29, 1916.*)

Yours, etc.,

(*HENRY W. KINGSLEY*,)

Attorney for (*Defendant*,)

Office and P. O. Address,

(*160 Broadway*,)

(*Borough of Manhattan*,)

(*City of New York*.)

To

(*SMITH & WELLMAN*,)

Attorneys for (*Plaintiff*,)

(*61 Wall Street*,)

(*New York City*.)

Affidavit on Motion

FORM No. 257

Affidavit on Motion to Strike from General Calendar

SUPREME COURT,
(*New York*) County.

(*GERALD HULL*,) as Receiver of
(*CYRUS FIELD*,)

Plaintiff,

against

(*JOSEPH H. BRADLEY*,)

Defendant.

No. (5860) on General
Calendar No. (2).

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*RALPH POLK*,) being duly sworn, says he is (*an attorney in the office of Henry W. Kingsley*,) counsel for the (*defendant*) in the above-entitled action.

That on or about the (17th) day of (*January*, 1916,) the (*plaintiff*) above named noticed this case for trial at the Trial Term of this Court, and this action is now No. (5860) upon General Calendar, No. (2), and is upon the day calendar in Trial Term, (*Part XIV*) thereof.

That the (*defendant*) never noticed this case for trial, and never in any manner consented that the same should be placed upon the said Trial Term Calendar.

That, (*as appears from the complaint herein, the plaintiff is not entitled to trial by jury, in that the complaint demands only equitable relief.*)

WHEREFORE (*defendant*) prays that an order be made herein striking this action from the Trial Term Calendar of this Court.

(*RALPH POLK*.)

Sworn to before me, this }
(29th) day of (*March*, 1916.) }

(*S. V. NORRIS*,)

Notary Public,

(*New York*) County.

SPECIAL CALENDAR

By Rule VI of Trial Term Rules, First District, certain causes may be moved to the Special Calendar in Part II and thereby an earlier trial secured.

The classes of these actions and the circumstances warranting this relief may be summarized practically under three groups as follows:

I

Positive Obligations to Pay Money or for Goods Sold and Delivered

Where the cause of action is one of those specified in subdivision 1 of Rule VI, *e. g.*, claims arising upon positive obligation for the payment of a sum of money, etc., and for goods sold and delivered, *the expected length of the trial is immaterial.* (163 App. Div. 879.)

II

Dilatory Defenses

Where there is no substantial defense or one interposed for delay and case is one of those mentioned in subdivision 2 of Rule VI.

III

Short Causes

Where the case can be tried within two hours and is one of the cases mentioned in subdivision 3 of Rule VI.

Here the expected length of trial is material.

When a cause has been placed on the Special Calendar, it remains there until disposed of. Attorneys are bound to be prepared for trial of causes for this calendar on the day for which the cause was set, and each day thereafter unless postponed for good cause shown by affidavit to the satisfaction of the Justice holding Part II. The order placing the cause on the Special Calendar should be served before the cause is brought to trial under it.

I

CLAIMS ARISING ON POSITIVE OBLIGATIONS TO PAY MONEY OR
FOR GOODS SOLD AND DELIVERED

FORM No. 258

Notice of Motion to Place Cause on Special Calendar Under
Subdivision 1. Rule VI *

SUPREME COURT,
(*New York*) County.

(*JOHN KELLY,*)

Plaintiff,

against

(*PERRY BALL,*)

Defendant.

No. (5866) on General
Calendar No. (2).

Sir:

PLEASE TAKE NOTICE that, upon the pleadings herein, whereby it appears that this is an action wherein the plaintiff seeks to recover (*upon a negotiable instrument,*) a motion will be made at a Trial Term, Part II of this Court to be held at the County Court House in the Borough of Manhattan, City of New York on the (2nd) day of (*October, 1916,*) at 10:00 A. M. for an order placing this case now No. (5866) on General Calendar No. (2) upon the Special Calendar for trial in Trial Term, Part II, and for such other and further relief as to the Court may seem just and proper.

Dated, (*New York, September 30, 1916.*)

Yours, etc.,

(*OLIVER BRADLEY,*)

Attorney for Plaintiff,

(*29 Broadway,*)

(*Borough of Manhattan,*)

(*New York City.*)

To

(*JAMES BARNARD,*)

Attorney for Defendant,

(*120 Broadway,*)

(*New York City.*)

* This motion is based upon the nature of the action alone. It may be made by either party after the cause is on the General Calendar, upon two days' notice to the opposing party. If the claim arises on a positive obligation to pay money, the length of time required to try the cause is immaterial. (163 App. Div. 879.)

II

DILATORY DEFENSES

Motion to Place on Special Calendar under Subdivision 2, Rule VI, Supreme Court, Trial Term, First District

This motion must be made "at the first term at which the cause shall have been placed on the general calendar."

It must be made upon five days' notice to the defendant before the Justice holding Trial Term, Part II, and can only be made in one of the cases mentioned in subdivision 2 of Rule VI and must be based upon affidavit satisfying the Court that there is no substantial defense to the action or that the answer was not interposed in good faith, or was interposed for the purpose of delay.

The papers upon this application and answering affidavits, if any, must be filed with the Calendar Clerk before noon of the day for which the application is noticed. No oral argument is heard upon such application, unless ordered by the Justice holding Trial Term, Part II.

Upon the disposition of this motion the Court exercises broad powers of discretion and may grant or deny the application with or without costs, or upon terms such as admitting facts not actually controverted, consenting to examination before trial of a party of witnesses, production of books, papers or documents, or giving security to secure the plaintiff in the event of final judgment in his favor.

The full force of this very salutary and remedied proceedural innovation has not yet been realized by the bar.

Motion to Advance Cause — Dilatory Plea

FORM No. 259

Notice of Motion to Place Case on Special Calendar — Ground,
Dilatory PleaSUPREME COURT,
(*New York*) County.

(CHARLES FOX,)

Plaintiff,

against

(JOHN SMITH,)

Defendant.

No. (10570) on General
Calendar No. (2).

Sir:

PLEASE TAKE NOTICE, that upon the annexed affidavits of (*John Clarke*) and (*Charles Fox*,) verified the (26th) day of (*September*, 1916,) and upon the pleadings herein and upon all other papers and proceedings heretofore had in the above-entitled action, a motion will be made at a Trial Term, Part II thereof, to be held at the County Court House in the Borough of Manhattan, City of New York, on the (2nd) day of (*October*, 1916,) at 10:00 o'clock A. M., or as soon thereafter as counsel can be heard, for an order placing this case upon the Special Calendar in Part II of this Court for trial at an early day, upon the ground that there is no substantial defense to this action and that the answer was not interposed in good faith, but was interposed solely for the purpose of delay, and for such other and further relief and imposition of terms as to this Court may seem just and proper.

Dated, New York, (*September 26*, 1916.)

Yours, etc.

(JAMES DIX,)

Attorney for Plaintiff,

(2 *Rector Street*,)

(New York City.)

To

(FRANK SMITH,) Esq.,

Attorney for Defendant,

(120 *Broadway*,)

(New York City.)

Motion to Advance Cause — Dilatory Defence

FORM No. 260

Affidavit on Motion to Place Cause on Special Calendar — Ground,
Dilatory PleaSUPREME COURT,
(*New York*) County.

(CHARLES FOX,)

Plaintiff,

against

(JOHN SMITH,)

Defendant.

No. (10570) on General
Calendar No. (2).STATE OF NEW YORK, }
County of (*New York*), } ss.:

(JOHN CLARKE,) 'being duly sworn, deposes and says: (1) That he is (*a clerk in the office of*) the attorney for the plaintiff herein and is familiar with all the facts concerning this case. (2) That this action was brought for (*money loaned by this plaintiff to the defendant.*) (3) That this cause is now at issue and is No. (10570) on the General Calendar No. (2), having been placed on said Calendar at this Term.* (4) That the answer of the defendant sets forth substantially (*a general denial of the allegations of the complaint and sets up no new matter by way of defense.*) (5) Deponent verily believes that there is no substantial defense to this action and that the same was not interposed in good faith but was interposed for the purpose of delay, (*as more fully appears by the affidavit of the plaintiff, accompanying this affidavit and verified the (26th) day of (September, 1916.)*) (6) That no previous application has been made for this order.

(JOHN CLARKE.)

Sworn to before me, this }
(26th) day of (*September, 1916.*) }

(HARRY FRISBY,)

Notary Public,

County of (*New York.*)

* Rule VI, subd. div. 2. Supreme Court Trial Term Rules New York county, reads as follows: " * * * at the first term at which the cause shall have been placed upon the General Calendar."

FORM No. 261

Supporting Affidavit to Place Cause on Special Calendar — Ground,
Dilatory PleaSUPREME COURT,
(*New York*) County.

(CHARLES FOX,)	} Plaintiff,	
against		
(JOHN SMITH,)		} Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(CHARLES FOX,) being duly sworn, deposes and says: (*That he has known the defendant, John Smith, for three (3) years last past. That he is the plaintiff herein and resides at No. 101 West 72d street, and the defendant resides at No. 204 West 71st street. That both were employed by the Joseph Cox Company. That on the 23d day of December, 1915, this plaintiff loaned to the defendant the sum of five hundred sixty-four (\$564.00) dollars, the defendant claiming at that time that he required the money to pay some pressing debts, and that plaintiff has frequently requested the defendant to repay the sum and defendant has repeatedly promised to pay the plaintiff the said sum, but has failed to do so, giving one excuse after another. That on February 10, 1916, this plaintiff received a letter from defendant in which defendant stated that if the plaintiff sued him for said amount, plaintiff would get nothing. A copy of said letter is hereto annexed and made a part of this affidavit. That notwithstanding defendant's said statements and promises, no part of said sum has been paid.*)

Deponent verily believes that (*there is no substantial defense to the action and that the answer was not interposed in good faith, but was interposed solely for the purpose of delay, and to defeat the plaintiff in the collection of his just demands.*)

Sworn to before me, this
(26th) day of (*September, 1916.*)

(ALICE MARTIN,)

(*Commissioner of Deeds,*) (*N. Y. City.*)

(CHARLES FOX.)

FORM No. 262

Notice of Motion to Place Case on Special Calendar as a Short Cause*

SUPREME COURT,

(*New York*) County.

(MATTHEW L. FRANCIS,)

against Plaintiff,

(MAX KENDRICK,)

Defendant.

No. (10576) on General Calendar No. (2).

Sir:

PLEASE TAKE NOTICE, that upon the pleadings herein and the annexed affidavit of (*Herman F. Stephens*), verified (*September 25, 1916*), a motion will be made at a Trial Term, Part II thereof, to be held at the County Court House, in the Borough of Manhattan, City of New York, on the (*2d*) day of (*October, 1916*), at 10:00 o'clock in the forenoon of that day for an order placing this cause upon the special calendar of this court for the trial of short causes under Trial Term, Rule VI, on the ground that the trial of this action will not occupy more than two hours and for such other and further relief as to the court may seem just and proper in the premises.

Dated, New York, (*September 25, 1916.*)

Yours, etc.,

(HERMAN F. STEPHENS.)

Attorney for Plaintiff,

(27 Pine Street.)

(Borough of Manhattan,)

(City of New York.)

To

(*WILLIAM FRENCH*,) Esq.,

Attorney for Defendant,

(200 Broadway,)

(Borough of Manhattan,)

(City of New York.)

*Two days' notice must be given. The motion may be made returnable on any day of the term. Papers and answering affidavits must be filed with the Clerk of Trial Term, Part II, before noon of the day for which the application is noticed. *No oral argument is allowed.* See Rule VI, subdivision 3, Trial Term Rules, First District.

Short Causes

FORM No. 263

Affidavit on Motion to Advance Short Cause to Special Calendar

SUPREME COURT,
(*New York*) County.

(*SCRANTON SURETY COMPANY*),

Plaintiff,

against

(*MAX KENDRICK*),

Defendant.

No. (10576) on Gen-
eral Calendar No.
(2).

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*HERMAN F. STEPHENS*), being duly sworn, deposes and says:

1. That he is attorney for the plaintiff herein; that this action was brought to recover upon a cause of action for (*unpaid premium on a surety bond upon which plaintiff became surety on the written application and request of the defendant.*)

2. That the answer of the defendant sets forth substantially (*a general denial of the allegations of the complaint and sets up no new matter by way of defense.*)

3. That this cause is now at issue and is No. (10,576) on General Calendar No. (2).

4. Deponent further says that he believes this action can be tried within two hours and sets forth as his reasons therefor: (*That plaintiff's proof will consist of the production of the written application signed by the defendant and acknowledged before a Notary Public containing an agreement to pay a premium for said bond as stated in the complaint and oral proof by two witnesses, officers of the plaintiff, that the bond described in said application agreement, was duly executed by the plaintiff, delivered to the defendant, and by him filed and used, and oral proof that the agreed premium has not been paid. The plaintiff will also offer letters signed by the defendant, stating his willing-*

Motion to Advance Short Cause — Opposing Affidavit

ness to pay the premium, if granted a certain amount of time to do so.)

5. That no previous application has been made for this order.
(HERMAN F. STEPHENS.)

Sworn to before me, this }
(25th) day of (September, 1916.) }

(JOHN CORT,)

Notary Public,

(New York) County.

FORM No. 264

Affidavit in Opposition to Motion to Advance Short Cause
SUPREME COURT,
(New York) County.

(MATTHEW L. FRANCIS,)	} Plaintiff,
against	
(FRANK HENDRICK,)	
Defendant.	}

STATE OF NEW YORK, }
County of (New York), } ss.:

(WILLIAM FRENCH,) being duly sworn, deposes and says: That he is the attorney for the defendant herein. That this action is brought to recover of defendant (describe briefly the plaintiff's cause of action.)

(That the defendant has interposed a verified answer which for a first defense sets up that there has been a failure of consideration for said note, and for a second defense, and by way of counterclaim, sets forth another cause of action arising on contract upon which defendant demands judgment against plaintiff for the sum of \$274.61. That plaintiff has served a reply to said answer, wherein he sets up a defense to the said counterclaim.)

Opposing Affidavit — Short Cause

That deponent verily believes that the defendant has a good and legal defense to the cause of action set forth in the complaint herein (*and a good cause of action arising out of the facts set forth in the counterclaim in the answer herein*).

That the deponent is informed and believes that the transactions between plaintiff and defendant out of which arose, and upon which are based, the causes of action set forth in the complaint and answer herein, and the defenses interposed to said causes of action respectively cover a period of over a (*year in which time plaintiff and defendant have been intimately associated in business and have had a great number of business transactions with one another, which said transactions relate to and consist of goods sold and delivered, work, labor and services rendered, money had and received and promissory notes by and between the parties to this action,*) all of which are material and relevant to the cause of action and counterclaim herein.

That the defendant will be necessarily obliged to call and examine at least (*six*) witnesses.

That it is essential and material to a fair trial of this action, and to a fair presentation of the facts set forth in the complaint, answer (*and reply herein, that the transactions, settlements and accounts had by and between plaintiff and defendant*) be gone into and examined in detail, at length both on direct and cross-examination.

That the trial of this case cannot possibly be had in two hours, and that deponent verily believes said trial will occupy (*a half day*) at least.

(WILLIAM FRENCH.)

Sworn to before me, this
(25th) day of (September, 1916.) }

(H. L. SMITH,)

Notary Public,

(New York) County, No. (189.)

In general the affidavit should set forth:

The nature of the defense, length of time the transactions covered, number of witnesses, showing what may be proved by them, probable duration of testimony, any peculiarity of witnesses that will cause reasonable delay, as need of interpreter, deafness, old age; and if books or lengthy documents are to be used, it may be well to set that forth; use of experts, etc.

PREFERENCES

The sections of the Code and Rules specifying cases in which a preference may be had are as follows:

§§ 789 to 793, Code.

Rule 36, G. R. P.

Rules III and VI, Trial Term Rules, New York County.

Rules XI and XII, Special Term Rules, New York County.

Rule III, Trial and Special Term Rules, Bronx County.

Rule XI, Special Term Rules, Kings County.

Rule VI, Special Rules Supreme Court, Erie County.

Rules Supreme Court — 7th Judicial District.

Rules II and III, City Court of the City of New York.

Outside of New York, Bronx, Kings, Queens and Erie Counties and the Seventh Judicial District, the procedure to obtain a preference is substantially as follows:

1. Where facts warranting preference appear in the pleadings or other papers on which case is to be tried, no order is required, but a claim for preference may be set forth in the note of issue and the clerk will act thereon.

2. Otherwise an order for preference should be obtained upon affidavits before service of notice of trial and a copy of such order should be served with or before the notice of trial on opposite party and on the clerk with note of issue.

The practice in the Counties of New York, Bronx, Kings, Queens and Erie, and in the Seventh Judicial District, and in the City Court of the City of New York is different from the rest of the State.

In these Counties no action or special proceeding can be placed as a preferred cause on the Calendar of a circuit or Trial Term or Special Term, except where the party desiring the preference serves on the opposite party with his notice of trial, or within fourteen days before the commencement of the term for which the case is noticed, a notice that an application will be made for leave to move the same as a preferred cause.

Where the right to a preference depends on extrinsic facts, the notice must be accompanied by an affidavit showing such facts.

Independent of the rules of procedure, every court has inherent

Trial Term — New York County

power to grant preferences on its own calendar. The right to a preference in an action where an order of arrest, or the property of the defendant attached, has been granted inures to both parties, as does that of an executor, administrator or trustee. The Sheriff's right to a preference does not entitle the defendant to a preference.

It is only those actions which an executor, or administrator brings in his representative capacity which are entitled to any preference; and, where another person is joined with him, there is no right of preference. To obtain a preference because the right of dower is involved, it must appear that the widow is dependent on such dower for support.

An action is entitled to a preference as being for the construction of a will only where it is directly for that purpose. A right of preference is waived by joining causes of action as to which there is no such right.

Where both parties notice the action for trial without claiming a preference, the right is waived. Where a preference is lost by failure to claim it, it cannot be regained by serving an amended pleading.

The judge has exclusive power to correct the calendar. An order granting a preference may be vacated by the judge holding the Trial Term.

NEW YORK COUNTY — TRIAL TERM CALENDARS

In New York County, a party desiring a preference under the Code must serve on the opposite party with the notice of trial, or within the time for serving such notice of trial, a notice that an application will be made at Trial Term, Part II, at the opening of the Term for which the cause is noticed for trial, for leave to move the same as a preferred cause. In the City Court of the City of New York, this motion is made at Trial Term, Part I.

The Justices holding Trial Terms, Part III and Part XIV, in charge of Calendars No. 1 and No. 2, may on application of any party to a cause, brought by or against a receiver of a corporation direct a preference and place the case upon the Day Calendar, although no such notice of application for a preference has been served with the notice of trial. This application to Part III or XIV must be made on five days' notice. Where the right to a preference applied for to Trial Term Part II depends

Claim of — With Notice of Trial

upon facts which do not appear in the pleadings or other papers upon which the case is to be tried, the notice must be accompanied by an affidavit showing such facts.

In any court, the application is directed to the discretion of the Court notwithstanding the mandatory language of § 793, Code, (*Ringlander v. Star Co.*, 98 App. Div. 101, aff'd 181 N. Y. 531.)

FORM No. 265

Separate Notice of Claim for Preference (to be Served With Notice of Trial),

SUPREME COURT,
(*New York*) County.

(*THE GARVILLE BANK*,)
Plaintiff,

against

(*THE STEEL TOOL COMPANY*,)
Defendant.

No. (5696) on General
Calendar No. (1).

Sir:

PLEASE TAKE NOTICE, that the (*plaintiff*) intends to move this case for trial at the (*October*) term of this Court for which term this cause is noticed for trial and that (*pursuant to Rule III of the Supreme Court Trial Term Rules, New York County*) upon the pleadings herein, we shall move this Court at Trial Term, (*Part II, thereof*), to be held at the (*County Court House, Borough of Manhattan, City of New York*), on the (*2nd*) day of (*October, 1916*), at (10:00) A. M., or as soon thereafter as counsel can be heard for an order granting this cause, No. (5696), on the General Calendar (*No. 1*), a preference (*and placing same upon an appropriate Day Calendar for a day certain during said term for trial*) upon the ground (*that this cause is an action for libel*), and is one of the cases mentioned in subdiv. (11), § 791, of the Code of Civil Procedure, and for

 Claim of — With Notice of Trial

such other and further relief as to the Court may seem just and proper.

Dated, (*New York, September 16, 1916.*)

Yours, etc.,

(*GRANT & SMITH,*)

Attorneys for (*Plaintiff,*)

Office & P. O. Address,

(*40 Broad Street,*)

(*Borough of Manhattan,*)

(*New York City.*)

To

Messrs. (*MOORE & JAMES,*)

Attorneys for (*Defendant,*)

(*290 Broadway,*)

(*New York City.*)

 FORM No. 266

Notice of Claim of Preference and Notice of Trial Combined

SUPREME COURT,

(*New York*) County.

(*MARY LAMB, as administratrix of
the goods, chattels and credits of
BERT LAMB, deceased,*)

against Plaintiff,

(*STEEL DOOR COMPANY,*)

Defendant.

No. (5690) on General
Calendar No. (1).

Sirs:

PLEASE TAKE NOTICE, that the issues of fact in this action will be brought to trial and an inquest taken herein at a Trial Term of this Court, appointed to be held in and for the County of (*New York,*) at (*the County Court House, Borough of Manhattan, City of New York,*) on the (*2nd*) day of (*October, 1916,*) at (*10:00*) o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Claim of — With Notice of Trial

ALSO PLEASE TAKE NOTICE, that an application will be made pursuant to subdivision (5) of § 791 of the Code of Civil Procedure, (*and Rule III of the Supreme Court Trial Term Rules, New York County*) at a Trial Term, (*Part II*) of this court, to be held at (*the County Court House, Borough of Manhattan, New York City,*) on the (2d) day of (*October, 1916,*) at the opening of court on that day or as soon thereafter as counsel can be heard, for an order granting this cause a preference (*and placing same upon an appropriate Day Calendar for a day certain during said term for trial,*) upon the ground that (*the sole plaintiff is suing as an administratrix.*)

Dated, (*New York, September 16, 1916.*)

Yours, etc.,

(*GRANT & SMITH,*)

Attorneys for (*Plaintiff,*)

Office & P. O. Address,

(*40 Broad Street,*)

(*Borough of Manhattan,*)

(*New York City.*)

To

Messrs. (*MOORE & JAMES,*)

Attorneys for (*Defendant,*)

(*290 Broadway,*)

(*New York City.*)

Claim of — And Notice of Trial

FORM No. 267

Notice of Trial and Notice of Preference Combined*

SUPREME COURT,
(*New York*) County.

(JONATHAN HARGIS,)

Plaintiff,

against

(ELSA WILLIAMS,)

Defendant.

No. (5500) on General
Calendar No. (2).

Sirs:

PLEASE TAKE NOTICE that the issues of fact in this action will be brought to trial, and an inquest taken herein at a Trial Term of this Court, appointed to be held in and for the County of (*New York*,) at the County Court House, (*Borough of Manhattan, City of New York*,) on the (2^d) day of (*October*, 1916,) at (10:00) o'clock of the forenoon of that day, or as soon thereafter as counsel can be heard.

ALSO PLEASE TAKE NOTICE that the plaintiff intends to move this cause for trial at said term and pursuant to subdivision (10) of § 791 of the Code, (*and Rule III, Supreme Court Trial Term Rules, New York County*,) and upon the pleadings herein, and the annexed affidavit of (*Edward Jarvis*,) verified the (16th) day of (*September*, 1916,) an application will be made to this Court at Trial Term, (*Part II thereof*,) to be held at the (*County Court House, Borough of Manhattan, City of New York*,) on the (2nd) day of (*October*, 1916) at (10:00) o'clock of the forenoon of that day, or as soon thereafter as counsel can be heard for an order granting this cause a preference (*and placing same upon an appropriate Day Calendar for a day*

* If either the defendant be imprisoned under an order of arrest, or the property of defendant is held under an attachment the trial may be preferred. Either plaintiff or defendant can make the motion, but neither party if defendant is out on bail. (*Rule 36, G. R. P.*)

Affidavit

certain during said term for trial,) on the grounds that the (goods of the defendant herein have been attached).

Dated, (*New York, September 16, 1916.*)

Yours, etc.,

(*JARVIS & SMITHERS,*)

Attorneys for (*Plaintiff,*)

(*35 Liberty Street,*)

(*New York City.*)

To

Messrs. (*HOWE & HANSON,*)

Attorneys for (*Defendant,*)

(*291 Broadway,*)

(*New York City.*)

FORM No. 268

Affidavit for Preference *

SUPREME COURT,

(*New York*) County.

(*FRANK WILSON,*)

Guardian ad litem of

BESSIE DANIELS, an Infant,)

Plaintiff,

against

(*JAMES ELWELL COMPANY,*)

Defendant.

No. 5575 on General
Cal. No. 2.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*Frank Wilson,*) being duly sworn, says: I am the plaintiff above named (and the guardian ad litem of *Bessie Daniels*, the plaintiff,) and am familiar with the above-entitled action. It is brought to recover the sum (of \$2,463.95, the amount of a certain draft drawn by *Fred Barn & Company* at London, England, on the 9th day of January, 1916, on the *Hanover National Bank*

* See notice of Trial and Claim of Preference, p. 608.

Affidavit

of the City of New York, in favor of said Bessie Daniels, and converted by the defendant to its own use.) This action was commenced by the service of the summons and complaint herein on the (23rd) day of (March, 1916.) Thereafter and on or about the (2nd) day of (May, 1916,) the defendant served its answer herein, appearing by Messrs. (Keenan & Moore). This action is (an action for conversion in which an infant is sole plaintiff). and is entitled to a preference pursuant to § 791, subdivision (5,) of the Code. Deponent further says (that the draft converted was purchased of said Barn & Company with the funds of the infant herein, said funds being the share of said infant in its father's estate and the only means of support which said infant has. That said Bessie Daniels, as appears by the affidavit of Brander Masson hereto attached, has for several months been in a critical state of health which requires that for the restoration of her health she be removed and remain indefinitely in a warmer and drier climate.) Deponent further says (that said infant has no means out of which the expense of such a trip may be defrayed other than the draft herein sued on).

WHEREFORE, deponent asks that this cause be granted a preference, and that (it be placed on an appropriate Day Calendar for a day certain during the October term for trial).

(FRANK WILSON.)

Sworn to before me, this }
(16th) day of (September, 1916.) }

(RALPH BRILL,)

Notary Public,
(New York) County.

Order Granting — To Accompany Notice of Trial

FORM No. 269

Order of Preference

At a Special Term of the New York Supreme Court,
held in and for the County of (*Rensselaer*) at
the County Court House, in the (*City of Troy*),
on the (*2nd*) day of (*October*, 1916.)

PRESENT:

Hon. (*W. O. HOWARD*),

Justice.

(*GARVILLE BANK, Limited*),

Plaintiff,

against

(*THE STEEL TOOL COMPANY*),

Defendant.

The plaintiff having made a motion to place this cause upon the calendar of the court for the trial of preferred causes pursuant to subdivision (10) of § 791 of the Code of Civil Procedure, and the said motion having duly come on to be heard, and after reading and filing the pleadings herein, in support of said motion, and there being no opposition thereto, it is on motion of (*Grant & Smith*), attorneys for the plaintiff,

ORDERED, that the said motion be and the same hereby is granted, and the above-entitled action be and the same hereby is given a preference over all non-preferred causes noticed for the (*November*) term.

Enter,

(*W. O. H.*)

J. S. C.

Preference Over Issues of Prior Terms

FORM No. 270

Notice of Trial and Notice of Preference Combined

SUPREME COURT,
(*New York*) County.

(*FRANK WILSON*, Guardian ad litem
of *BESSIE DANIELS*,)

Plaintiff,

against

(*JAMES ELWELL COMPANY*,)

Defendant.

No. 5575 on
General Cal.
No. (2.)

Sirs:

PLEASE TAKE NOTICE, that the issues of fact in this action will be brought to trial and an inquest taken herein at a trial term of this Court appointed to be held in and for the County of (*New York*,) at the County Court House, (*Borough of Manhattan, City of New York*,) on the (2nd) day of (*October, 1916*,) at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

ALSO PLEASE TAKE NOTICE, that the (*plaintiff*) intends to move this cause for trial at said Term and pursuant to subdivision (5) of § 791 of the Code (*and Rule III, Supreme Court Trial Term Rules, New York County*,) and that upon the pleadings herein and upon the affidavits of *(*Frank Wilson*,) verified the (16th) day of (*September, 1916*,) (*and on the affidavit of Brander Masson, verified the same day*,) we shall move this Court at a Trial Term, (*Part II*) thereof, to be held at (*the County Court House, Borough of Manhattan, City of New York*,) on the (2nd) day of (*October, 1916*,) at (10:00) o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order granting this cause, No. (5575) on General Calendar No. (2), a preference, (*and placing same upon an appropriate Day Calendar for a day certain during said term for trial*,) on the ground that (*the sole plaintiff is an infant*) and

* See p. 605

Affidavit

for such other and further relief as to this Court may seem just and proper.

Dated, (*New York, September 16, 1916.*)

Yours, etc.,

(*CONKLING & COX,*)

Attorneys for (*Plaintiff,*)

(*25 Broad Street,*)

(*New York City.*)

To

Messrs. (*KEENAN & MOORE,*)

Attorneys for (*Defendant,*)

(*32 Liberty Street,*)

(*New York City.*)

FORM No. 271

Affidavit to Obtain Preference Under Rule 36, G. R. P.

SUPREME COURT,

(*New York*) County.

(*JONATHAN HARGIS,*)

Plaintiff,

against

(*ELSA WILLIAMS,*)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*EDWARD JARVIS,*) being duly sworn, says: that he is an attorney and counsellor at law, and one of the members of the firm of (*Jarvis & Smithers,*) attorneys for the plaintiff in the above entitled action. That this action was brought on or about the (*13th*) day of (*April, 1916,*) by service of a summons and verified complaint on the defendant. That on or about the (*28th*) of (*April, 1916,*) and before the defendant had appeared in the

Affidavit

action, or answered an attachment issued out of this Court, and on or about the (28th) of (April, 1916,) the sheriff of the county of (New York) levied upon certain property of the defendant in the State and county of (New York,) and said property is still held under attachment. The answer was served on or about the (6th) day of (June, 1916,) and an amended answer on or about the (6th) day of (July, 1916.)

Deponent further says, that the action was brought to recover of the defendant the sum of (\$918.91,) for (*work, labor and services performed and rendered for defendant by the plaintiff, and for materials and supplies delivered by the latter to the former.*)

Deponent, therefore, respectfully asks that this cause be granted a preference and (*placed upon an appropriate Day Calendar for a day certain during the October term for trial,*) pursuant to Rule 36 of the General Rules of Practice, (*and Rule III of the Trial Term Rules of this Court.*)

(EDWARD JARVIS.)

Sworn to before me, this }
(11th) day of (September, 1916.) }

(WILLIAM FAUN,)

Notary Public,

(New York) County.

DEFAULTS

DEFAULTS ARE DANGEROUS AND SERIOUS

“The taking of an inquest, and the entering of judgment thereon, are not mere idle ceremonies to be brushed aside for the mere asking. Parties seeking to be relieved from their defaults must show a reasonable excuse for their neglect, and must establish a meritorious cause before they are entitled to the favor of the Court.” (*Clews v. Peper*, 112 *App. Div.* 430, *First Department*.)

“Section 724 of the Code permits the court to ‘relieve a party from a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect.’ This is very far short of allowing the opening of default as a matter of course, as some seem to suppose. Many have come to think that the worst that can come from a default is the payment of ten dollars to open it. A default is a serious matter. The diligent litigant who respects the rules of the court is entitled to protection against those who have little or no regard for such rules.” (*Ironclad Mfg. Co. v. Steffen*, 114 *App. Div.* 792.)

Where a default is taken in a remote county of the State and it is desired to bring on the motion to open the default and stay further proceedings, any Justice of the Supreme Court can sign the order to show cause irrespective of the County of the State in which the motion is made returnable. In this connection, see § 769, Code, *et seq.*

Notice of Motion

FORM No. 272

Notice of Motion to Dismiss Complaint for Failure to Prosecute
SUPREME COURT,
(*New York*) County.

(RALPH MATTHEWS,)	}
Plaintiff,	
against	
(HENRY MAXON,)	
Defendant.	

Sir:

PLEASE TAKE NOTICE, that upon the affidavit of (*Benjamin H. Davidson*,) verified the (*12th*) day of (*November, 1916*,) and on the pleadings and other proceedings had herein, the undersigned will move this Court at a Special Term, (*Part I*,) to be held at the County Court House, in the (*Borough of Manhattan, City of New York*,) on the (*20th*) day of (*November, 1916*,) at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order directing that this action be dismissed with costs, for the plaintiff's unreasonable neglect to proceed therein against said defendant, and for such other and further relief as may be just, with costs of this motion and action.

Dated, (*November 12, 1916*.)

Yours, etc.,

(*RUDD & DAVIDSON*,)

Attorneys for Defendant,

(*No. 120 Broadway*,)

(*Borough of Manhattan*,)

(*New York City*.)

To

(*L. H. CHARLES*,) Esq.,

Attorney for Plaintiff,

(*270 Broadway*,)

(*Borough of Manhattan*,)

(*New York City*.)

Affidavit on Motion

FORM No. 273

Affidavit on Motion to Dismiss Complaint for Want of Prosecution

SUPREME COURT,

(New York) County.

(RALPH MATTHEWS,)

Plaintiff,

against

(HENRY MAXON,)

Defendant.

STATE OF NEW YORK, }
County of (New York). } ss.:

(BENJAMIN H. DAVIDSON,) being duly sworn, says: I am one of attorneys for the defendant herein. This action is triable by jury and issue was joined herein on (January 27th, 1915.) Said action has never been placed upon the trial term calendar of this Court, and plaintiff has failed to bring the same to trial according to the course and practice of this Court. Issues of a later date, to wit: as late as (March 1st, 1915,) have been reached in their regular order upon said calendar and disposed of.

(BENJAMIN H. DAVIDSON.)

Sworn to before me, this }
(12th) day of (November, 1916.) }

(H. S. NATHAN,)

Notary Public;

(New York) County, No. (68).

Order

FORM No. 274

Order Dismissing Complaint for Want of Prosecution

At a Special Term, (*Part I*,) of the Supreme Court of the State of New York, held in and for the County of (*New York*,) in the County Court House in said County on the (*20th*) day of (*November*, 1916.)

PRESENT:

Hon. (*GEORGE V. MULLAN*,)

Justice.

(<i>RALPH MATTHEWS</i> ,)
Plaintiff,
against
(<i>HENRY MAXON</i> ,)
Defendant.

On reading and filing the affidavit of (*Benjamin H. Davidson*,) and on the pleadings and proceedings had herein and after hearing (*Benjamin H. Davidson*,) of counsel for the defendant, in support of the motion and (*Louis H. Charles*,) Esq., of counsel for plaintiff, in opposition thereto, and after due deliberation being had thereon,

NOW, on motion of (*Rudd & Davidson*,) attorneys for the defendant, it is

ORDERED that the motion of the defendant be and hereby is in all respects granted, (*with \$10 costs*,) and that the plaintiff's complaint herein be and the same hereby is dismissed for want of prosecution, and that defendant have judgment accordingly with costs.

Enter,

(*G. V. M.*)

J. S. C.

Order Opening and Setting Aside Judgment

FORM No. 275

**Order Opening Default and Setting Aside Judgment Entered Thereon
— Default in Pleading**

At a Special Term, (*Part I*,) of the Supreme Court,
held in and for the County of (*New York*,) at
the County Court House in (*the Borough of*
Manhattan, City of New York,) on the (*13th*)
day of (*May*, 1916.)

PRESENT:

Hon. (*JOHN FORD*,)

Justice.

(<i>FRANK VERNON</i>,) Plaintiff, against (<i>THOMAS PARSONS</i>,) Defendant.	}
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A judgment having heretofore been entered in this action on the (*7th*) day of (*May*, 1916,) in favor of the plaintiff and against the defendant by default for want of an answer, and a motion having been made by the defendant to open said default and set aside said judgment, and said motion having duly come on to be heard, now, on reading and filing the order to show cause, dated (*May 9*, 1916,) and the affidavit of (*Thomas Parsons*,) verified the (*9th*) day of (*May*, 1916,) and the proposed verified answer of the defendant herein in support of said motion, and the affidavit of (*William Cohen*,) verified the (*12th*) day of (*May*, 1916,) in opposition thereto, and after hearing Mr. (*Ralph Carson*,) of counsel for the plaintiff in support of said motion, and Mr. (*William Cohen*,) of counsel for the defendant in opposition thereto, and due deliberation having been had, it is, on motion of (*Ralph Carson*,) attorney for the defendant,

ORDERED, that upon payment by the defendant to plaintiff's attorney of (\$25) costs, said motion be and the same hereby is in all respects granted, and the default of the defendant, (*Thomas Parsons*,) in failing to serve an answer herein be opened, and it is further

Opening — Order to Show Cause

ORDERED, that the judgment heretofore entered on the (7th) day of (May, 1916,) in favor of the plaintiff and against the defendant for the sum of (\$797.60,) be, and the same hereby is vacated and set aside; and it is further

ORDERED, that the defendant, (*Thomas Parsons*,) within (ten) days after the service of a copy of this order with a notice of entry, comply with the terms of this order, serve upon the plaintiff's attorney a copy of his answer herein, and in default thereof that said judgment continue in full force and effect.

Enter,

(*J. F.*,)

J. S. C.

FORM No. 276

Order to Show Cause — Motion to Open Default

SUPREME COURT,
(*New York*) County.

(*FRANK VERNON*,)

Plaintiff,

against

(*THOMAS PARSONS*,)

Defendant.

Upon the annexed affidavit of (*Thomas Parsons*,) sworn to the (10th) day of (May, 1916,) and the proposed verified answer of (*Thomas Parsons*,) the defendant above named, and on all the proceedings had herein, let the plaintiff or his attorney show cause before the justice of this Court, sitting at Special Term, (*Part I, thereof*,) to be held at the County Court House in the (*Borough of Manhattan, City of New York*,) on the (13th) day of (May, 1916,) at the opening of Court on that day, or as soon thereafter as counsel can be heard, why an order should not be made, opening the default of the defendant and setting aside the judgment entered herein in favor of the plaintiff and against the defendant on the (6th) day of (May, 1916,) and why leave should not be granted to the defendant to serve an answer herein, and why

Opening — Affidavit

such other and further relief should not be granted as may be just in the premises.

Pending the hearing and determination of this motion and the entry of order thereon, let all proceedings on the part of the plaintiff, his attorneys and agents and the sheriff of the county of (*New York*,) for the enforcement of the said judgment, be stayed, and sufficient cause therefor to me appearing, let service of a copy of this order, together with the annexed affidavit and proposed verified answer on the plaintiff's attorney on or before (*May 11, 1916*,) be sufficient.

Dated, (*New York, May 10, 1916*.)

(*JOHN W. GOFF*,)

Justice Supreme Court.

FORM No. 277

Motion to Open Default — Affidavit

SUPREME COURT,
(*New York*) County.

(*FRANK VERNON*,)

Plaintiff,

against

(*THOMAS PARSONS*.)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*THOMAS PARSONS*,) being duly sworn, says that he is the defendant in the above-entitled action; that the summons and verified complaint herein were served on him on the (20th) day of (*April, 1916*;) that on the (22d) day of (*April, 1916*,) deponent (*was notified by telegraph that the warehouse of Calhoun. Parsons & Company, in the City of Chicago, of which firm deponent is a member, had been destroyed by fire, and that his presence was imperatively needed to look after the interests of said firm in connection with the adjustment and settlement of said loss*) and that deponent (*left for the City of Chicago on the 23d day of April and was compelled to remain in said city until*

Motion to Open — Affidavit

the 8th day of May, 1916, for the purpose of securing an adjustment and settlement of the said loss) and that, by reason of these facts and through inadvertence, he neglected to place the summons and complaint which had been served on him in the hands of his attorney until the (9th) day of (May, 1916,) which day, as he is advised by his said attorney, was later than the twenty days within which deponent was required by law to serve his answer.

Deponent further says that he has fully and fairly stated the facts of the case to (*Ralph Carson,*) his counsel herein, who has an office at (*2 Rector Street, Borough of Manhattan, City of New York,*) and that he has a good and substantial defense thereto upon the merits, as he is advised by his said counsel after such statement and verily believes.*

Deponent further says that this action is brought to (*recover the sum of \$780, alleged to be due to the plaintiff from the defendant as a balance upon account for goods sold and delivered and services rendered at the special instance and request of defendant,*) but that deponent has a complete defense to said alleged claim, as he is advised, (*in a written accord and satisfaction had between the parties,*) as more particularly appears by paragraphs (*III, IV and V*) of the proposed verified answer hereto attached; and that it is deponent's intention to defend this action in good faith.

Deponent therefore asks that his default for want of an answer be opened and that the judgment entered against him in favor of the plaintiff on the (7th) day of (May, 1916,) be vacated and set aside and that he be granted leave to serve a copy of the annexed verified answer on the plaintiff's attorney within (ten) days of an entry of an order upon this application, and that all proceedings on the part of the plaintiff for the enforcement of said judgment be stayed pending the hearing and determination of this application and the entry of an order thereon, and for such other and further relief as may be just in the premises.

(*THOMAS PARSONS.*)

Sworn to before me, this }
(9th) day of (May, 1916.) }

(*FRANK BENDER,*)

Notary Public,

(*New York*) County, No. (102.)

* Add affidavit by counsel showing merits, see 56 Misc. 612.

Motion to Open — Order to Show Cause

FORM No. 278

Order to Show Cause Why Default Should Not be Opened (Com-
plaint Dismissed)SUPREME COURT,
(*New York*) County.

(SAMUEL SARD,)

Plaintiff,

against

(JOHN CROSBY *et al.*,)

Defendant.

Upon the annexed affidavit of (*Henry Foote*) sworn to the (*17th*) day of (*December, 1915,*) and upon the pleadings herein, and all other papers and proceedings had in this action,

Let the defendants or their attorneys show cause before this court at Special Term, (*Part I*) thereof, to be held at the County Court House, in the (*Borough of Manhattan, City of New York,*) on the (*18th*) day of (*December, 1915,*) at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made vacating and setting aside the dismissal of the complaint and opening the default of the plaintiff herein, and why this case should not be restored to the calendar of this court for trial, and why the plaintiff should not have such other and further relief as to this court may seem just and proper in the premises.

In the meantime, and until the hearing and final determination of this motion and the entry of an order thereon, let all proceedings on the part of the defendants, their attorneys and agents and the sheriff of the county of (*New York*) be stayed.

Reasons appearing therefor, let service hereof this day before (3 P. M.) be deemed sufficient.

Dated, (*New York, December 14, 1915.*)

(*EDWARD R. FINCH.*)

Justice Supreme Court.

Motion to Open — Affidavit

FORM No. 279

Affidavit on Motion to open default — Complaint dismissed
SUPREME COURT,
 (New York) County.

(SAMUEL SARD,)

Plaintiff,

against

(JOHN CROSBY and JAMES
 BROWN,)

Defendants.

STATE OF NEW YORK, }
 City and County of (New York,) } ss.:

(HENRY FOOTE,) being duly sworn, deposes and says:

I am managing attorney for Messrs. (Storms & Hoff,) the attorneys for the plaintiff in the above-entitled action.

This action was commenced by the plaintiff to recover of the defendants the sum of (\$9,734.66,) for * * *

(Set forth nature of action.)

After the defendants served their answer this case was regularly placed upon the calendar of this court, and appeared in its order on the Calendar at Trial Term, Part (X) of this court, and was on such Day Calendar of Trial Term, Part (X,) on the (12th and 13th) days of (December, 1915,) and on several days prior to that time. On the morning of the (12th) of (December, 1915,) no one appearing or answering on behalf of the plaintiff, this case was marked "dismissed" by the Justice holding Trial Term, (Part X.) The reason why no one appeared to answer the Calendar for the plaintiff on that day was that (I was under the mistaken impression that the case had been passed until December 13th, upon an affidavit filed by me upon the call of the Calendar on December 11th, having understood the Justice holding Part (X) on that day to have so ruled. I have since learned from an examination of the Calendar for that Part on December 11th that

Motion to Open — Affidavit

the ruling of the Trial Justice was "passed for the day." In the mistaken belief that the case would not appear on the Calendar on December 12th, I left for Albany, N. Y., in the afternoon of December 11th to attend a hearing before the Cities Committee of the State Senate and did not return to the city until the evening of December 12th.)

I believe that this action has been brought in good faith, and that plaintiff desires to prosecute the same in good faith. The plaintiff has fully and fairly stated the facts of this case to me and after such statement I verily believe that plaintiff has a good and meritorious cause of action herein and have so advised him.

I make the pleadings in this case part of this affidavit, and beg leave to submit the same upon this motion. Up to the present time no judgment of dismissal has been entered, and I ask for an order vacating and setting aside said dismissal and opening the plaintiff's default, and restoring this case to Trial Calendar, No. (2) of this court of cases marked "Ready." I also ask for an order to show cause, so that a stay of proceedings may be granted, that this motion may be heard before the entry of judgment, or the enforcement of any judgment which may be entered.

No previous application has been made for the relief herein asked.

(HENRY FOOTE.)

Sworn to before me, this }
(17th) day of (December, 1915.) }

(JAMES TAYLOR,)

(Commissioner of Deeds,
New York City.)

Order Vacating Dismissal

FORM No. 280

Order Opening Default (Where Complaint Dismissed)

At a Special Term (*Part I*) of the Supreme Court of New York, held in and for the County of (*New York*) at the County Court House, in the (*Borough of Manhattan, City of New York,*) on the (*24th*) day of (*December, 1916.*)

PRESENT:

Hon. (*JOHN C. CLARK,*)
Justice.

(*SAMUEL SARD,*)
Plaintiff,

against

(*JOHN CROSBY et al.,*)
Defendants.

The plaintiff herein having moved this court by an order to show cause granted by Hon. (*Bartow S. Weeks,*) Justice, returnable (*December 18, 1915,*) for an order vacating and setting aside the dismissal of the complaint, and opening the default of the plaintiff herein, and restoring this case to the calendar of this court for trial.

Now, on reading and filing said order to show cause, dated (*December 17, 1915,*) and the affidavit of (*Henry Foote,*) verified (*December 17, 1915,*) and the complaint and answer herein in support of said motion, and on reading and filing the affidavit of (*Edwin Thomas,*) verified (*December 17, 1915,*) and of (*John French,*) verified (*December 18, 1915,*) in opposition thereto, now after hearing (*Henry A. Foote,*) Esq., of counsel for plaintiff, in support of said motion, and (*Edwin Thomas,*) Esq., of counsel for defendants, in opposition thereto, and due deliberation having been had,

On motion of (*White & Rice,*) attorneys for the defendants, it is

ORDERED, that upon the payment of (*forty*) (\$40) dollars costs, within five days after service of a copy of this order with notice of entry, said motion be and the same hereby is in all respects granted, and further

Vacating Judgment—Order to Show Cause

ORDERED, that the default taken against the plaintiff for failure to appear upon the call of this cause for trial, be and hereby is opened, and it is further

ORDERED, that the order heretofore made herein on the (16th) day of (December, 1915,) dismissing the complaint with costs, and proceedings founded thereon, be and the same hereby is vacated and set aside, and further

ORDERED, that this cause be restored to the (*Trial Term*,) Calendar No. (2) of this court of causes marked "ready," and the clerk is directed to set this cause down accordingly, and it is further

ORDERED, that in case of failure of the plaintiff to comply with the terms of this order, judgment may be entered dismissing the complaint herein, with the costs of the action and \$10 costs of this motion.

Enter,
(J. C. C.,)
J. S. C.

FORM No. 281

Order to Show Cause Why Default Should Not Be Opened

SUPREME COURT,
(*New York*) County.

(JAMES FAY,)	}
Plaintiff,	
against	
(BUFFALO PRINTING COM PANY,)	
Defendant.	

Upon the pleadings and all proceedings had herein and upon the affidavit of (*William C. Carroll*), verified the (11th) day of (*April*, 1916), and upon the judgment herein, entered in (*New York*) County Clerk's office on the (10th) day of (*April*, 1916,) and upon all the papers and proceedings herein, it is

Vacating Judgment — Order to Show Cause

ORDERED, that the plaintiff show cause at Special Term, Part (I) of this court, to be held at the County Court House in the (*Borough of Manhattan, City of New York*), on the (17th) day of (*April*, 1916), at the opening of court on that day, or as soon thereafter as counsel can be heard, why the inquest taken by the plaintiff against the defendant herein on the (29th) day of (*March*, 1916), and the judgment entered thereon in the office of the (*New York*) County Clerk on (*April* 10, 1916), in favor of the plaintiff and against the defendant, for the sum of (*seven hundred* (\$700.00)) dollars damage and (*one hundred and twenty-seven and 80/100* (\$127.80)) dollars costs, should not be opened and the said judgment vacated and set aside and this case restored to the Day Calendar of this court for trial, and why such other and further relief in the premises as may be just should not be granted.

And it appearing that an order to show cause bringing on this application in less than eight days is proper and necessary,

IT IS ORDERED, that service of this order to show cause, together with the affidavit upon which it is granted, made upon the attorney for the plaintiff on or before the (17th) day of (*April*, 1916), shall be sufficient service thereof, and

IT IS FURTHER ORDERED, that all proceedings for the enforcement of said judgment and upon said judgment be, and they are hereby stayed, until the hearing and determination of this application.

Dated, (*New York, April* 11, 1916.)

(*SAMUEL GREENBAUM*,)

Justice of the Supreme Court of the
State of New York.

Affidavit on Motion

FORM No. 282

Affidavit on Motion to Open Default

SUPREME COURT,
(*New York*) County.

(<i>JAMES FAY,</i>)	}	Plaintiff,
against		
(<i>BUFFALO PRINTING COM- PANY.</i>)		
Defendant.		

STATE OF NEW YORK, }
(*Erie*) County,) } ss.:

(*WILLIAM C. CARROLL,*) being duly sworn, deposes and says that he is (*one of the attorneys for the defendant*) herein. That issue was joined herein the (23d) day of (*November, 1914.*)

That this is an action brought by plaintiff against the defendant for (*an alleged libel, published by the defendant at the City of Buffalo, N. Y., of and concerning the plaintiff.*)

That the defendant has at all times been ready and willing to try this case when reached upon the calendar of this court for trial. That deponent has had charge of said case on behalf of said defendant, and that neither deponent nor his firm had notice of any kind whatsoever that this case had gone upon the calendar of this court for trial, and were not aware that the case was to be reached for trial. That by reason of the fact that (*the defendant, and the attorney for said defendant, are residents of the City of Buffalo and being unfamiliar with the calendar practice in New York County, they failed to keep sufficiently in touch with the progress of the calendar of this court in the County of New York.*)

That on the (29th) day of (*March, 1916*), as deponent is informed and verily believes, this case was upon the Day Calendar of this court and that a default was taken by the plaintiff, and damages in the sum of (*seven hundred (\$700)*) dollars were assessed, and judgment entered for that amount with (*one*

Affidavit on Motion

hundred twenty-seven and 80/100 (\$127.80)) dollars costs, on (April 10, 1915); that the first knowledge which deponent's firm had that this case was placed upon the calendar for trial was when (they received by mail on this 11th day of April, 1916, of a copy of a judgment and notice of entry, and a bill of costs, filed and taxed by the plaintiff herein.)

That the defendant herein desires to have the said judgment vacated and the default opened herein and this case tried, so that the defendant may be heard upon such trial and permitted to present upon said trial its defense to the plaintiff's alleged cause of action. That the defendant herein, through its (*President, James Hart,*) has fully and fairly stated the facts of the case to deponent, who is one of defendant's attorneys in this action and has an office at (*701 Ellicott Building, Buffalo, N. Y.,*) and that the defendant has a good and substantial defense upon the merits to the cause of action set forth in the complaint, as deponent has so advised the defendant and verily believes.

Deponent asks for an order to show cause, returnable in less than eight days, for the reason that a judgment stands docketed against this defendant, for the sum of (*eight hundred twenty-seven and 80/100 (\$827.80))* dollars, which is a serious detriment to the credit of the defendant, and that while the said defendant is financially responsible, and able to pay any judgment which may be awarded against it, it is important to the said defendant in the preservation of its credit, that said judgment be speedily removed and that the case be speedily tried and determined upon the merits.

Deponent further asks that all proceedings for the enforcement of said judgment be stayed, until the hearing and determination of this application.

Deponent further says that no previous application has been made herein for an order to show cause, or for the relief herein asked, or for any stay of proceedings under such judgment.

(*WILLIAM C. CARROLL.*)

Sworn to before me, this }
(11th) day of (*April, 1916.*) }

(*EDGAR M. CROSBY,*)

Notary Public,

(*Erie*) County.

Order Filing Nunc Pro Tunc

FORM No. 283

Order Directing Filing of Pleading Nunc Pro Tunc

At a Special Term of the Supreme Court, (*Part II*) thereof, held in and for the County of (*New York*), at the County Court House, (*N. Y. City*), on the (*12th*) day of (*April*, 1916.)

PRESENT:

Hon. (*SAMUEL GREENBAUM*),
Justice,

(<i>CITY OF NEW YORK</i>), Plaintiff, against (<i>GEORGE BELING</i>), Defendant.	}
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Upon the annexed affidavit of (*Edward W. Sims*), verified the (*12th*) day of (*April*, 1916,) and upon all the papers and proceedings had herein, and

On motion of (*Edgar F. Hazelton*), attorney for the (*defendant*) herein, it is

ORDERED that the answer in this cause be filed *nunc pro tunc*, as of the (*24th*) day of (*February*, 1916.)

Enter:

(*S. G.*)
J. S. C.

 Leave to File Nunc Pro Tunc — Affidavit

FORM No. 284

Motion to Open Default in Filing Pleading — Affidavit

SUPREME COURT,
(*New York*) County.

(<i>CITY OF NEW YORK</i> ,)	} ss.:
Plaintiff,	
against	
(<i>GEORGE BELING</i> ,)	
Defendant.	

STATE OF NEW YORK, }
County of (*Queens*,) }

(*EDWARD W. SIMMS*,) being duly sworn, deposes and says: That he is over the age of twenty-one years and resides at (*Jamaica, New York*); that he is clerk in the office of (*Edgar F. Hazelton*,) attorney for the (*defendant*) in the above-entitled action; that on the (23d) day of (*February*, 1916,) he served the answer herein on the attorney for the plaintiff, and that through inadvertence the same was not filed in the office of the Clerk of this Court. That this case is set down for trial for the (17th) day of (*April*, 1916.)

That no previous application has been made for the order herein.

WHEREFORE, deponent prays that an order may be made and entered, allowing the answer herein to be filed *nunc pro tunc* as of the (24th) day of (*February*, 1916.)

(*EDWARD W. SIMS*.)

Sworn to before me, this }
(12th) day of (*April*, 1916.) }

(*JOHN HUNT*,)
Notary Public,
(*Queens*) County.

ADJOURNMENT OF TRIAL

FORM No. 285

Affidavit to Secure — Reason: Absence of Counsel*

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	} Plaintiff,
against	
(<i>JOHN DOE,</i>)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM RICH,*) being duly sworn, says that he is an attorney and counsellor-at-law and managing clerk in the office of (*Theodore Ryan*), the attorney for the (*plaintiff*) in the above-entitled action. That deponent is informed and believes that said (*Theodore Ryan*) expects to try this case when reached, and that he has prepared the case and is ready for trial.

Deponent further says that said (*Theodore Ryan*) left (*New York*) on (*Monday morning last, May 15, 1916*), on an important business engagement at (*Dushore, Pennsylvania*), and has been absent from the (*City of New York*) ever since. That he was expected to return to his office to-day, but has not yet returned and deponent does not know positively whether or not he will return to-morrow. That, if the above cause is reached for trial on the (*19th*) instant, deponent asks that the same may be passed until (*Monday*) next to await the return of said (*Theodore Ryan*) to try the same. That there is no one else in the office who has sufficient knowledge of the case to enable him to try the same, and that the same cannot be tried on behalf of the plaintiff

* But see Rule VII, Trial Term Rules, First Dist.

Illness of Party

until said (*Theodore Ryan*) returns. That this is the first time this cause has appeared on the Day Calendar.

(*WILLIAM RICH.*)

Sworn to before me, this }
(19th) day of (*May*, 1916.) }

(*WILLIAM REACH,*)

Notary Public,
(*New York*) County (*No.* (3)).

FORM No. 286

Affidavit to Secure — Reason: Illness of Party

SUPREME COURT,
(*New York*) County.

(*JOHN JONES,*)

Plaintiff,

against

(*WILLIAM JAMES,*)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM HENDERSON,*) being duly sworn, deposes and says: That he is the attorney for the defendant (*William James*), in the above-entitled action, on information and belief derived from the affidavit of (*Dr. William Smith*), verified the (11th) day of (*March*, 1916), hereto annexed, that the defendant is now ill and confined to his bed with (*the grippe*), at his residence, (*No. 211 W. 48th street, New York City,*) and that he is now unable to leave his house to testify in this case, and that it would be dangerous to his life to attend as a witness herein or now be examined at any other place.

To deponent's knowledge, defendant's evidence is necessary and material in support of his defense herein and no other person can

 Illness of Party

give such testimony. That deponent is informed and verily believes that defendant will not be sufficiently well to leave his house or to testify herein inside of (*two*) weeks from this (*11th*) day of (*March, 1916*) as appears by the annexed affidavit of (*William Smith*).

(*WILLIAM HENDERSON.*)

Sworn to before me, this }
 (*11th*) day of (*March, 1916*). }

(*JOHN DANIELS,*)

Notary Public,

(*New York*) County (*No. 236*).

 FORM No. 287

Supporting Affidavit to Secure — Illness of Party

SUPREME COURT,
 (*New York*) County.

(*JOHN JONES,*)

Plaintiff,

vs.

(*WILLIAM JAMES,*)

Defendant.

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

WILLIAM SMITH,) being duly sworn, deposes and says, that I am a physician duly and regularly licensed to practice medicine in the State of New York; that I visited (*William James*), at his home, (*211 W. 48th street, in the City of New York*), on the (*11th*) day of (*March, 1906*), as his physician, and know his condition to be serious; that he is now confined to his bed suffering from an attack of (*the grippe*), the same being accompanied with (*high temperature and weak heart*); that in my judgment as his physician it would be dangerous for the said (*William James*) to leave his house, and that he is unable to

Engagement of Counsel

transact any business, or to attend as a witness and is unable to give testimony in this case; that in the opinion of deponent the said (*William James*) will not be able to leave his house for a period of (*two weeks*) from this (*11th*) day of (*March, 1916*).
(*WILLIAM SMITH.*)

Sworn to before me, this }
(*11th*) day of (*March, 1916*). }

(*JOHN DANIELS,*)

Notary Public,

(*New York*) County (*No. 236*).

FORM No. 288

Affidavit to Secure — Reason: Engagement of Counsel

SUPREME COURT,
(*New York*) County.

(*JOHN JONES,*)

Plaintiff,

against

(*JOHN DOE.*)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM RICH,*) being duly sworn, deposes and says: I am an attorney and counsellor-at-law, with offices at (*No. 76 William street, Borough of Manhattan, City of New York*), and I am associated with (*Thomas Oaks*), who has been retained as counsel for the (*defendant*) in this action; that the said (*Oaks*) has prepared this action and is ready for trial, and expects to try the same when reached. That I am acquainted with all of said (*Oaks'*) professional engagements; that the said (*Oaks*) is now actually engaged, as counsel for the plaintiff, in the trial of the case of (*Williams*) against (*Riley*), before (*Mr. Justice Allen*),

Engagement of Counsel

in the (*City Court of the City of New York, Part V*), and that the said trial of (*Williams*) against (*Riley*) will probably continue during all of (*Monday, April 10, 1916*).

WHEREFORE, I respectfully request that the case of (*Jones*) against (*Doe*) be passed for the day.

(*WILLIAM RICH.*)

Sworn to before me, this }
(10th) day of (*April, 1916*). }

(*THEODORE UPSOM*),

Notary Public,

(*New York*) County (*No. (12)*).

SUBPOENAS

FORM No. 289

Subpœna

THE PEOPLE OF THE STATE OF NEW YORK,

To

(*WILLIAM RICH*).

GREETING:

WE COMMAND YOU, that all and singular business and excuses being laid aside, you and each of you appear and attend before one of the justices of our (*Supreme*) Court, at a (*Trial*) Term, (*PART XIV*) thereof, to be held in and for the county of (*New York*,) at the County Court House, in the said county on the (*6th*) day of (*May*, 1916), at (10) o'clock in the forenoon, to testify and give evidence in a certain action now pending in the (*Supreme*) Court, then and there to be tried between (*John Jones*), plaintiff, and (*John Doe*), defendant, on the part of the (*plaintiff*); and for a failure to attend you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit fifty dollars in addition thereto.

WITNESS, Honorable (*John W. Goff*),* one of the justices of our (*Supreme*) Court at the County Court House in the County of (*New York*,) the (*4th*) day of (*May*), in the year one thousand nine hundred and (*sixteen*).

(*W. F. SCHNEIDER*,)

Clerk.

(*WILLIAM REILLY*,)

Attorney for (*Plaintiff*,)

(*No. 52 William Street*,)

(SEAL.)

(*New York City*.)

* In the First District insert name of justice sitting at Special Term, Part II.

It is safest practice to have the subpoena signed by the clerk and the seal of the court affixed.

Duces Tecum

FORM No. 290

Subpoena Duces Tecum

THE PEOPLE OF THE STATE OF NEW YORK,

To

(WILLIAM RICH,) Esq.,

GREETING:

WE COMMAND YOU, that all the business and excuses being laid aside you appear and attend before one of the justices of our (*Supreme*) Court, at a (*Trial*) Term, (*Part XIV*) thereof, to be held in and for the county of (*New York*), at the County Court House in said county, on the (*16th*) day of (*May*, 1916), at (10:00) o'clock in the (*fore*)noon, to testify and give evidence in a certain action now pending undetermined in the said court between (*John Jones*), plaintiff, and (*John Doe*), defendant, on the part of the (*plaintiff*), and that you bring with you, and produce at the time and place aforesaid, a certain (*agreement made by John Doe, as party of the first part, and William Rich, as party of the second part, bearing date January 12th, 1914, relating to the distribution of profits arising out of the sale of certain real estate therein mentioned*), now in your custody, and all other (*deeds, evidences and writings*) which you have in your custody or power, concerning the premises. And for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit fifty dollars in addition thereto.

WITNESS, (*Hon. John W. Goff*),* one of the justices of our said* (*Supreme*) Court, at the County Court House, in said county of (*New York*) on the (*10th*) day of (*May*, 1916).

(W. F. SCHNEIDER,)

Clerk.

(WILLIAM REILLY,)

Plaintiff's Attorney,

(No. 52 William Street,)

(SEAL.)

(New York City.)

* In the First District insert name of judge sitting at Special Term, Part ii.

In the case of a corporation a subpoena *duces tecum* should be directed to the president or the officer in charge of the books or papers.

To Testify — Before Referee

FORM No. 291

Subpoena to Attend Before Referee

SUPREME COURT,
(*New York*) County.

(*COMMERCE NATIONAL BANK*),

Plaintiff,

against

(*JOHN W. McKEE*) and others,
Defendants.

By virtue of an order made in the above action entered herein on the (*3d*) day of (*October*, 1915,) I (*Edward Ely*), the referee appointed in this action, do hereby summon you to appear at my office No. (*346 Broadway, in the Borough of Manhattan, City of New York*), on the (*7th*) day of (*October*, 1915), at (*eleven*) o'clock in the (*fore*)noon to attend a hearing of the matters in said action referred to me as such referee, pursuant to said order. And hereof fail not at your peril.

Dated, (*October 3*, 1915).

(*EDWARD ELY*),

Referee.

To (*William J. Kimball*).

Oath

FORM No. 292

Oath of Referee

SUPREME COURT,
(*New York*) County.

[Title.]

STATE OF NEW YORK, }
County of (*New York*), } ss.:

I, (*John Doe*.) the Referee, appointed by an order of this Court, made and entered in the above entitled action, and bearing date the (25th) day of (*August*, 1916), to (*take in from order of reference the purpose of the reference*), do solemnly swear that I will faithfully and fairly determine the questions so referred to me and make a just and true report thereon, according to the best of my understanding.

(*JOHN DOE.*)

Sworn to before me, this }
(5th) day of (*September*, 1916). }

(*RICHARD ROE*.)

Notary Public,

(*New York*) County.

NOTICE TO PRODUCE

FORM No. 293

Notice to Produce*

(CITY COURT OF THE CITY OF NEW YORK.)

(JOHN JONES.)

Plaintiff,

against

(JOHN DOE,)

Defendant.

Sirs:

PLEASE TAKE NOTICE, that you are required to produce on trial of the above-entitled action, the following described papers:

I. (A certain note dated on or about September 29th, 1913, for fifty-three and 50/100 dollars (\$53.50), payable to John Doe, or bearer, five (5) months after date, made by Mary Doe and indorsed by defendant.)

II. (*Notice of protest received by you on or about April 26th, 1914, concerning a certain note dated September 29th, 1913, payable to John Doe, or bearer, for fifty-five dollars (\$55.00), due five (5) months after date, made by Mary Doe and indorsed by defendant.*)

III. (A certain letter dated April 26th, 1914, and addressed to defendant at No. 1 Monroe street, New York city, advising him of the protest of the note mentioned in the foregoing paragraph, asking defendant as indorser to pay same, and signed by William Reilly.)

IV. All other documents, notes, papers, books, letters and writings whatsoever in your possession or control containing any entry, memorandum or other matter in any way relating to the above cause.

* Always annex affidavit of service immediately upon effecting service unless an admission of due and timely service is obtained.

Form

In case of your failure to produce any of the foregoing, secondary evidence of the contents of the same will be offered.

Dated, (*New York, April 29, 1914*).

Yours, etc.,

(*WILLIAM REILLY,*)

Attorney for (*Plaintiff,*)

(*27 Pine Street,*)

(*Borough of Manhattan,*)

(*City of New York.*)

To

(*EZRA WILLIAMS & SONS,*) Esqs.,

Attorneys for (*Defendant,*)

(*15 William Street,*)

(*New York City.*)

MOTIONS AND ORDERS

FORM No. 294

Notice of Motion

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	} Plaintiff,
against	
(<i>JOHN DOE,</i>)	
Defendant.	

Sir:

TAKE NOTICE, that upon the affidavit of (*John Doe,*) verified the (12*th*) day of (*May,* 1916,) a copy of which is hereto annexed, the undersigned will move this court at a Special Term, (*Part I*) thereof, to be held at the County Court House, in the (*Borough of Manhattan, City of New York,*) on the (17*th*) day of (*May,* 1916,) at the opening of the court on that day, or as soon thereafter as counsel can be heard for an order (*requiring the complaint herein to be made more definite and certain by stating at what time the agreement mentioned therein was made;*) and for such other and further relief as to the court may seem just and proper, and for the costs of this motion.

Dated, (*May 12th,* 1916.)

(*EZRA WILLIAMS,*)
Attorney for Defendant,
(*No. 15 William Street,*)
(*Borough of Manhattan,*)
(*City of New York.*)

To

(*WILLIAM REILLY,*) Esq.,
Attorney for Plaintiff,
(*No. 27 Pine Street,*)
(*New York City.*)

Order to Show Cause

FORM No. 295

Order to Show Cause

SUPREME COURT,
(New York) County.

(JOHN DOE,)

Plaintiff,

against

(RICHARD ROE,)

Defendant.

Upon the (*summons and complaint*) in this action and the affidavit of (*John Doe*,) the (*plaintiff*) herein, verified the (31st) day of (*August*, 1916,) let the (*defendant*) above named or his attorney show cause before this court at a Special Term, (*Part I*,) to be held at the County Court House, in the (*Borough of Manhattan, City of New York*,) on the (2^d) day of (*September*, 1916,) at (10:00) o'clock in the (*fore*)noon, or as soon thereafter as counsel can be heard, why an order should not be made (*appointing a receiver of all the property and assets of the co-partnership of Doe & Roe, including the Hotel Richard, conducted by the said co-partnership*,) in the (*Borough of Manhattan, City of New York, with the usual directions*,) and that the (*plaintiff*) have such further or other relief as to this court may seem just and proper. Sufficient cause appearing, service of this order upon the (*defendant or defendant's attorney*) on or before the (1st) day of (*September*, 1916,) shall be sufficient and in the meantime and until the hearing and determination of this motion and the entry of an order thereon, let all proceedings on the part of (*defendants*) be stayed.

Dated, (*August 31*, 1916.)

(JOHN C. CLARK,)

Justice of the Supreme Court.

Notice of Settlement of Order

FORM No. 296

Notice of Settlement of Order

Sir:

PLEASE TAKE NOTICE, that the within order will be presented to Mr. Justice (*Goff.*) at his Chambers, in the County Court House, (*Borough of Manhattan, City of New York,*) on the (*12th*) day of (*July, 1916,*) at (*10:00*) o'clock (*A. M.*) for settlement and signature.

Dated, (*July 10, 1916.*)

(JOHN WILLIAMSON,)

(*Plaintiff's*) Attorney,

Office and P. O. Address,

(*1 Wall Street,*)(*Borough of Manhattan,*)(*New York City.*)

To

(ROBERT JENSEN,) Esq.,

(*Defendant's*) Attorney,(*309 Broadway,*)(*New York City.*)

Notice of Entry of Order

FORM No. 297**Notice of Entry**

Sir:

PLEASE TAKE NOTICE, that the within is a true copy of
(*an order,*) duly made and entered in the within-entitled (*action,*)
and filed in the office of the clerk of (*the County of New York,*)
on the (*6th*) day of (*July,*) 1916.

Dated, New York, (*July 6, 1916.*)

Yours, etc.,

(*ROBERT JENSEN,*)

Attorney for (*Plaintiff,*)

Office and P. O. Address,

(*27 Pine Street,*)

(*Borough of Manhattan,*)

(*New York City.*)

To

(*THEODORE WILLIAMS,*) Esq.,

Attorney for (*Defendant,*)

(*11 Wall Street, New York.*)

Court Order — Judge's Order

FORM No. 298

Caption for Court Order

At a Special Term, (*Part I*) of the (*Supreme Court*),
held in and for the County of (*New York*), at the
(*County Court House*), in the (*Borough of Man-*
hattan, City of New York), in said county, on the
(*1st*) day of (*September, 1917.*)

PRESENT:

Hon. (*SAMUEL GREENBAUM*),
Justice.

(<i>JOHN DOE</i>),	}	Plaintiff,
against		
(<i>RICHARD ROE</i>),		
		Defendant.

Enter,
(*S. G.*),
J. S. C.

FORM No. 299

Caption for a Judge's Order

SUPREME COURT,
(*New York*) County.

(<i>JOHN DOE</i>),	}	Plaintiff,
against		
(<i>RICHARD ROE</i>),		
		Defendant.

(*Date.*)

(*Signature of Justice.*)

Justice Supreme Court of the State of New York,

Resettlement of Order

FORM No. 300

Notice of Application for Resettlement of Order

SUPREME COURT,
(*New York*) County.

(<i>ALFRED D. ZIEGER</i>),	}
Plaintiff,	
against	
(<i>CHARLES E. GARRISON</i>) and another,	
Defendants.	

Sir:

PLEASE TAKE NOTICE that upon the annexed affidavit of (*Julius Rosen*,) *verified the (17th) day of (February, 1916,*) application will be made to the Hon. (*Eugene A. Philbin*,) a Justice of this Court at (*a Special Term, Part VI*,) thereof, to be held at the New York County Court House, in the (*Borough of Manhattan, City of New York*,) on the (*26th*) day of (*February, 1916*,) at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order resettling the order entered herein on the (*10th*) day of (*February, 1916*,) by (*reciting in the said order the affidavits of Julius Rosen, verified the 30th day of January, 1916, and the affidavit of Alfred D. Zieger, verified the 3d day of February, 1916, and the copies of affidavits of Howard Thornton, verified the 8th day of January, 1916, and of Charles E. Garrison, verified the 8th day of January, 1916,*) all of which were offered on said motion on behalf of the plaintiff, and for such other and further relief as to the Court shall seem just and proper.

Dated, (*New York, February 17, 1916.*)

Yours, etc.,

(*JULIUS ROSEN*,)

Attorney for (*Plaintiff*,)

(*No. 21 William Street,*

New York City.)

To

(*HOWARD THORNTON*,) Esq.,

Attorney for Defendant,

(*43 Third Street,*

Newburg, N. Y.)

Resettlement Short Form Order

In New York County decisions of motions are usually entered by the clerk upon short form orders unless the decision of the Court directs otherwise. For the purposes of appeal or greater definiteness in the record it is frequently advisable to have entered a more formal order. This is done by means of an application for a resettlement of the short form order.

FORM No. 301

Notice of Application to Resettle Short Form Order

SUPREME COURT,

(New York) County.

(ADAM ROSE,)

Plaintiff.

against

(WILLIAM POST,)

Defendant.

Index No. (13440).

Year (1915.)

Sir:

PLEASE TAKE NOTICE, that an application will be made to resettle the order entered herein in short form by Mr. Justice (*Pendleton*) at (*Special*) Term, (*Part III*) on (*October 27, 1915, denying defendant's motion for judgment on the pleadings,*)

And that the annexed affidavit of (*Morris Stern,*) sworn to (*November 1, 1915,*) and a copy of the pleadings herein, heretofore filed in the office of the Clerk of the County of New York, and the annexed proposed order for signature and settlement will be presented to the Justice holding Special Term of this Court, (*Part I*) thereof, to be held in the County Court House in the (*Borough of Manhattan, City of New York,*) on the (*7th*) day of (*November, 1915*) at (*10:30*) o'clock in the forenoon for submission to Mr. Justice (*Pendleton,*) the Justice who made the order hereby sought to be resettled.

Resettling Short Form Order — Affidavit

The said order is sought to be resettled for the reason that (*in the recital of the moving papers used upon the motion, the short form order recites "affidavit annexed" as having been used, whereas the motion was heard and decided solely upon the pleadings;*) and for such other and further relief as to the Court may seem just and proper.

Dated, (*New York, November 1, 1915.*)

Yours, etc.

(*J. BREWSTER ROE,*)

Attorney for (*Defendant,*)

(*2 Rector Street,*)

(*Borough of Manhattan,*)

(*New York City.*)

To

(*JACOB C. BOLEN,*) Esq.,

Attorney for (*Plaintiff,*)

(*30 Broad Street,*)

(*New York City.*)

FORM No. 302

Affidavit on Motion to Resettle Short Form Order

SUPREME COURT,
(*New York*) County.

(*ADAM ROSE,*)

Plaintiff,

against

(*WILLIAM POST,*)

Defendant.

Index No. 13440.

Year, 1915.

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*MORRIS STERN,*) being duly sworn, says: I am one of the attorneys for the (*defendant*) in the above-entitled action. An order was entered herein in short form by Mr. Justice (*Pendleton* at *Special Term, Part III,*) dated (*October 27, 1915, denying*

 Order Resettling Short Form Order

defendant's motion for judgment on the pleadings.) Said order erroneously stated that the papers used on the motion were, ("*Notice of motion and affidavit annexed,*" and the pleadings. *The motion was made on the ordinary notice of motion and on the pleading and was heard solely on the pleadings.*)

For this reason I desire a resettlement of the order so that an appeal can be taken therefrom.

(*J. BREWSTER ROE.*)

Sworn to before me, this }
(1st) day of (*November, 1911.*) }

(*C. J. MORRIS,*)

Notary Public,

(*N. Y.*) Co., No. 107.

 FORM No. 303

Order Resettling Short Form Order

At a Special Term, (*Part I,*) of the Supreme Court of the State of New York, held in and for the County of (*New York,*) at the County Court House in the (*Borough of Manhattan, City of New York,*) on the (*8th*) day of (*November, 1911.*)

PRESENT:

Hon. (*FRANCIS K. PENDLETON,*)

Justice.

(*ABRAHAM FELT,*)

Plaintiff,

against

(*THE GERMANIA LIFE INSURANCE COMPANY,*)

Defendant.

Index No. 13440.
Year, 1911.

The defendant in the above-entitled action having made application on due notice for the (*6th*) day of (*November, 1911,*) for a resettlement of the order entered herein, dated the (*27th*) day of (*October, 1911:*) Now, on reading and filing the affidavit of

Order Resettling Short Form

(*J. Brewster Roe*,) verified (*November 1, 1911*,) and notice of resettlement with proof of service thereof; and on motion of (*Dulon & Roe*,) attorneys for the defendant,

IT IS ORDERED, that the said order of (*October 27, 1911*,) be and the same is hereby resettled so as to read as follows:

"At a Special Term, (Part I,) of the Supreme Court of the State of New York, held in and for the County of New York at the County Court House, in the Borough of Manhattan, City of New York, on the 27th day of October, 1911.

PRESENT:

Hon. *FRANCIS K. PENDLETON*,
Justice.

(*ABRAHAM FELT*,)
Plaintiff,

against

(*THE GERMANIA LIFE INSURANCE COMPANY*,)
Defendant.

Index No. 13440.
Year, 1911.

The defendant in the above-entitled action having made a motion for judgment on the pleadings dismissing the complaint in the above-entitled action, with costs, on the ground that the amended complaint does not state facts sufficient to constitute a cause of action, and said motion coming on to be heard in its order: On reading and filing the notice of said motion for judgment on the pleadings herein and on motion of Mr. J. Brewster Roe, of counsel for the defendant, in favor of the motion, and Mr. Jacob C. Bolen, of counsel for the plaintiff, in opposition thereto; now, on motion of Mr. Jacob C. Bolen, attorney for the plaintiff,

IT IS ORDERED that the said motion be and the same is hereby denied, with ten dollars costs.

(*F. K. P.*,)
J. S. C.

Notice of Exception to.

FORM No. 304**Notice of Exception to Sureties**

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	} Plaintiff,
against	
(<i>JOHN DOE,</i>)	
Defendant.	

Sirs:

PLEASE TAKE NOTICE, that the plaintiff excepts to the sufficiency of the sureties in the bond* filed herein on the (11th) day of (*July*, 1916.)

Dated, (*New York, July 12, 1916.*)

Yours, etc.,

(*WILLIAM FRENCH,*)

Attorney for Plaintiff,

Office & P. O. Address,

(*No. 11 Wall Street,*)

(*Borough of Manhattan,*)

(*City of New York.*)

To

Messrs. (*WILSON & DOWNING,*)

Defendant's Attorneys,

(*No. 32 Broadway,*)

(*New York City.*)

* Give description, e. g., undertaking on attachment.

Notice of Justification

FORM No. 305

Notice of Justification

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	}
Plaintiff,	
· against	
(<i>JOHN DOE,</i>)	
Defendant.	

Sirs:

PLEASE TAKE NOTICE, that the sureties on the (*plaintiff's undertaking on replevin*) herein will justify before one of the justices of this court at a Special Term (*Part II*) thereof, to be held in the County Court House in the (*Borough of Manhattan, City of New York,*) on the (*29th*) day of (*July, 1916,*) at (*ten*) o'clock in the (*fore*)noon.

Dated, (*New York, July 24, 1916*).

Yours, etc.,

(*WILLIAM FRENCH,*)

Attorney for Plaintiff,

Office and P. O. Address,

(*No. 11 Wall Street,*)

(*Borough of Manhattan,*)

(*City of New York.*)

To

Messrs. (*WILSON & DOWNING,*)

Defendant's Attorneys,

(*No. 32 Broadway,*)

(*New York City.*)

DECISIONS AND JUDGMENTS ON DEMURRER

Where demurrers are interposed by different defendants, the findings and conclusions should be embraced in one decision and judgment and not in separate decisions and judgments. (117 App. Div. 643.)

If you represent party whose demurrer is overruled, see that the interlocutory judgment contains leave to withdraw demurrer and plead over. (110 App. Div. 133, 118 App. Div. 658.)

FORM No. 306

Decision Overruling Demurrer (Granting Leave to Plead Over)
SUPREME COURT,
(New York) County.

(JONATHAN ROBERTS,)	}
Plaintiff,	
against	
(ALEXANDER DUMONT,)	}
Defendant.	

The issue of law raised by the demurrer of the defendant to the complaint, coming on to be heard by the court at Special Term, (*Part V*) thereof, held by the undersigned at the County Court House in the (*Borough of Manhattan, City of New York,*) and after hearing (*Charles F. Brown,*) Esq., of counsel for the defendant in support of the demurrer, and (*Roland Ransom,*) Esq., of counsel for the plaintiff in opposition thereto, and due deliberation having been had thereon, I decide and find as follows:

CONCLUSIONS OF LAW

I. That the said complaint states facts sufficient to constitute a cause of action.

II. That the plaintiff is entitled to an interlocutory judgment overruling said demurrer, with costs, to be taxed by the clerk,

Overruling Demurrer — Leave to Plead Over

but with leave to the defendant to plead anew upon payment of said costs, within twenty days after due service of said judgment, with notice of entry thereof upon the defendant's attorneys, and in default thereof plaintiff is entitled to a final judgment herein for the relief demanded in the complaint.

III. Judgment is hereby directed accordingly.

Dated, (*July 16, 1915.*)

(*JOHN FORD,*)

Justice of the Supreme Court.

LEAVE TO PLEAD OVER

Where an order of the Appellate Division, affirming an interlocutory judgment overruling a demurrer to the complaint, grants leave to plead over conditionally, the affirmance of the order by the Court of Appeals carries with it an affirmance of such leave, and express permission by that court to withdraw the demurrer and interpose an answer is unnecessary.

The party may answer upon complying with the terms, counting the time from the filing of the remittitur. (*Cassidy v. Sauer*, 188 N. Y. 547; 213 N. Y. 672.)

Where an interlocutory judgment overruling a demurrer to affirmative defenses has been affirmed without costs with leave to the plaintiff to withdraw the demurrer within twenty days from the service of this order on payment of costs in the court below, and a copy of the order has been served upon the plaintiff's attorney with notice that the same has been duly entered in the office of the clerk of the Appellate Division and no objection to such service has been made, the plaintiff, after the expiration of the twenty days, is in default, and must excuse such default before he will be allowed to withdraw his demurrer. (*Wilds v. Erie Railroad Company*, 171 App. Div. 253.)

Overruling Demurrer — To Complaint

FORM No. 307

Interlocutory Judgment Overruling Demurrer to Complaint

SUPREME COURT,
(*New York*) County.

(<i>HARRY SUMMER,</i>)	}
Plaintiff,	
against	
(<i>THE ASSOCIATED PRINTERS,</i>)	
Defendant.	

This cause having been regularly brought on for trial upon the issues of law formed by the plaintiff's complaint and the defendant's demurrer thereto, at a Special Term, (*Part IV*) of the Supreme Court, County of (*New York*), held at the County Court House in the (*Borough of Manhattan, City of New York*), before Hon. (*Mitchell L. Erlanger*), one of the justices of said court, on the (*4th*) day of (*April, 1916*), and said court having heard Mr. (*John Henry Durand*), of counsel for defendant, and Mr. (*William Wilson Warren*), of counsel for the plaintiff, and having, after due deliberation, duly made and filed its decision directing an interlocutory judgment to be entered herein, overruling said demurrer, with costs, with leave to the defendant to plead anew on payment of said costs within twenty days;

NOW, on motion of (*Henry Winfield*), attorney for the plaintiff herein, it is

ORDERED AND ADJUDGED, that the defendant's demurrer to the complaint herein be overruled with costs of (*thirty-six and 85/100*) dollars (\$36.85,) as taxed, with leave to said defendant to plead anew upon payment of said costs within twenty days after due service of a copy of this interlocutory judgment, with notice of entry, upon the defendant's attorneys, and in default thereof the plaintiff shall have final judgment herein for the relief demanded in the complaint.

Judgment entered (*April 10, 1916*.)

(*W. F. SCHNEIDER*),
Clerk.

Sustaining Demurrer—To Complaint

FORM No. 308

Interlocutory Judgment Sustaining Demurrer to Complaint

SUPREME COURT,
(*New York*) County.

(*JAMES SLATER*),

Plaintiff,

against

(*LUDWIG VON BARWIG*),

Defendant.

The issue of law herein raised by the demurrer of the defendant to plaintiff's complaint, having been regularly brought on for trial before Mr. Justice (*Greenbaum*), at Special Term (*Part V*) of the Supreme Court, (*New York*) County, held at the County Court House in the (*Borough of Manhattan, City of New York*), on the (*10th*) day of (*March, 1916*), and the court having heard Mr. (*Edward Barlow*), of counsel for the defendant, and Mr. (*Mortimer Bond*), of counsel for the plaintiff, and having, after due deliberation, made and filed its decision sustaining said demurrer, and granting leave to the plaintiff to serve an amended complaint upon payment of costs within twenty days, and directing that an interlocutory judgment be entered accordingly;

NOW, on motion of (*Mortimer Bond*), attorney for defendant, it is

ORDERED AND ADJUDGED, that the demurrer of the defendant to the complaint herein be and hereby is sustained, with (*thirty-six and 85/100*) dollars (\$36.85) costs as taxed; further

ORDERED AND ADJUDGED, that the plaintiff have leave to serve an amended complaint herein on payment of said costs within twenty days after due service of a copy of this judgment, with notice of entry thereof upon the attorneys for the plaintiff, and in default thereof that the defendant have final judgment dismissing the complaint herein on the merits, with costs.

Judgment entered the (*18th*) day of (*March, 1916*.)

(*W. F. SCHNEIDER*),

Clerk.

Overruling Demurrer — To Counterclaim

FORM No. 309

Decision Overruling Demurrer to Counterclaim

SUPREME COURT,
(*New York*) County.

(ALBERT LUSK and JAMES BOCK,)	} Plaintiffs, against (THE GEORGETOWN BREWING COMPANY,) Defendant.

The plaintiffs having demurred to the counterclaim set forth in the answer of the defendant, on the grounds that said counterclaim does not state facts sufficient to constitute a cause of action, and is not of the character specified in section 501 of the Code of Civil Procedure, and the matter having duly come on before me for hearing on the (13th) day of (*November, 1915,*) and the plaintiffs having appeared by (*Charles Wood,*) Esq., of counsel, and the defendant by (*William Dale,*) Esq., of counsel, and the issue of law raised by said demurrer having been argued and submitted, and due deliberation having been had thereon; and upon reading and filing the complaint, answer and demurrer herein, I now make and file the following decision and conclusions of law:

I. The matters referred to in the counterclaim form a part of the transactions or contract set forth in the complaint. The said counterclaim states facts sufficient to constitute a cause of action and comes within the provisions of section 501 of the Code of Civil Procedure.

II. The defendant is entitled to interlocutory judgment, overruling said demurrer, with costs, which are hereby awarded defendant to be paid by plaintiffs, but with leave to plaintiffs upon

 Overruling Demurrer — To Counterclaim

payment of costs to reply within twenty days after service upon their attorneys of the decision and interlocutory judgment herein.

Let interlocutory judgment be entered in accordance herewith.

Dated, (*November 21, 1915.*)

(*JOSEPH E. NEWBURGER,*)

Justice Supreme Court of the
State of New York.

 FORM No. 310

Interlocutory Judgment Overruling Demurrer to Counterclaim

SUPREME COURT,

(*New York*) County.

(*ALBERT LUSK and JAMES
BOCK,*)

Plaintiffs,

against

(*THE GEORGETOWN BREWING
COMPANY,*)

Defendant.

The (*plaintiffs*) having demurred to the (*counterclaim set up in the answer of defendant,*) and the issue of law thereby raised having duly come on for trial on the (*13th*) day of (*November, 1916,*) in Special Term, (*Part IV,*) before Mr. Justice (*Joseph E. Newburger,*) and the plaintiffs having appeared by (*Charles Wood,*) Esq., of counsel, and the defendant by (*William Dale,*) Esq., of counsel, and the matter having been duly heard, and the court having made and filed its decision in writing, dated (*November 21, 1916,*) directing interlocutory judgment to be entered to the following effect; and defendant's costs having been adjusted at (\$35.12;)

NOW, on motion of (*Holt & Dale,*) attorneys for (*defendant,*) it is

ADJUDGED AND DECREED, that the demurrer interposed by (*plaintiffs*) to the (*counterclaim set forth in the answer of*

Sustaining Demurrer — To Defense

defendant,) be and the same hereby is overruled and that (*defendant*) recover of (*plaintiffs*) the sum of (*thirty-five* 12/100) dollars (\$35.12), (*its*) costs as taxed by the clerk; and it is further

ADJUDGED AND DECREED, that upon payment of said costs, (*plaintiffs*) have leave to serve a (*reply*) within twenty days after service upon their attorneys of a copy of the decision and interlocutory judgment herein, and in case of failure of the plaintiff to comply with the terms hereby imposed and to serve his reply as herein directed final judgment shall be entered in favor of the defendant and against the plaintiff for the amount demanded in the counterclaim.

Judgment, (*November 3, 1916.*)

(*W. F. SCHNEIDER,*)

Clerk.

FORM No. 311

Interlocutory Judgment, Sustaining Demurrer to Separate Defense

(*CITY COURT OF THE CITY OF NEW YORK.*)

(*JAMES ROOT,*)

Plaintiff,

against

(*THE AMERICAN COMPANY,*)

Defendant.

This cause, having been regularly brought on for trial upon the issues of law framed by the defendant's answer and the plaintiff's demurrer thereto at a Special Term of this Court, held by the Hon. (*Edward B. La Fetra,*) one of the Justices of this Court, who, having heard the parties by their counsel, and after due deliberation, has duly made and filed his decision in writing sustaining the said demurrer and directing judgment to that effect to be entered herein, with costs, and the costs of said demurrer having been taxed by the clerk of this Court at the sum of (*thirty-six*) dollars (\$36); now, upon motion of (*Green*

Sustaining Demurrer—To Counterclaim

& Green,) attorneys for the plaintiff, it is adjudged that the plaintiff's demurrer to the further separate and distinct defense set forth in the answer of the defendant on the ground that it is insufficient in law upon the face thereof be, and the same hereby is sustained, and said defense is hereby dismissed with (*thirty-six*) dollars (\$36) costs to said plaintiff; * that said costs be included in the final judgment, if rendered in favor of plaintiff, and offset if final judgment be rendered in favor of defendant.

(THOMAS F. SMITH,)

Clerk.

Dated, (*April 10, 1916.*)

FORM No. 312**Interlocutory Judgment Sustaining Demurrer to Counterclaim**

SUPREME COURT,
(*New York*) County.

(JOHN WILLIAMS,)

Plaintiff,

against

(THE AMERICAN SHIRT COM-
PANY,)

Defendant.

This cause, having been regularly brought on for trial upon the issues of law framed by the defendant's answer and the plaintiff's demurrer thereto at Special Term, (*Part IV*) of this court, held by Mr. Justice (*Bartow S. Weeks*,) who, having heard the parties by their counsel, and after due deliberation, has duly made and filed his decision in writing sustaining the said demurrer and directing judgment to that effect to be entered herein, with costs; and the costs of said demurrer having been taxed by the clerk of this court at the sum of (*thirty-six*) dollars (\$36); now, upon motion of (*Budd & Budd*,) attorneys for the plaintiff, it is adjudged that the plaintiff's demurrer to the counterclaim set forth in the answer of the defendant on the ground that said

* See note p. 660.

Sustaining Demurrer To Counterclaim — Costs On

counterclaim does not state facts sufficient to constitute a cause of action, be and the same hereby is sustained, and said counterclaim is hereby dismissed with (*thirty-six*) dollars (\$36) costs to said plaintiff; that said costs be included in the final judgment, if rendered in favor of plaintiff, and offset if final judgment be rendered in favor of defendant.

Dated, (*April 15, 1916.*)

(*W. F. SCHNEIDER,*)

Clerk.

* The last clause in Forms No. 311 and No. 312 is sustained in *Cassavoy v. Pattison*, 101 *App. Div.* 128, and in *Frey v. Barnaby*, 113 *App. Div.* 912, but in the Fourth Department the last clause should read, “and plaintiff have execution, therefore, as provided in sections 3232, 3233 and 779 of the Code of Civil Procedure.”

In the author's opinion the *Cassavoy* and *Frey* cases are unsound, and the opinion of the Fourth Department is approved, and the party should be entitled to collect costs as motion costs are collected, and the judgment in all cases should provide as above set forth for the Fourth Department. (*Biglow v. Drummond*, 109 *App. Div.* 132.) Perhaps a motion can be made to sever the actions, and then final judgment can be entered and general execution issued, and thus an appeal obtained to the Court of Appeals before the final termination of all the issues.

See 159 *App. Div.* 800.

DECISIONS

FORM No. 313

Decision of Judge —After Trial Without a Jury

SUPREME COURT,
(*New York*) County.

(*JAN MACPHERSON,*)

Plaintiff,

against

(*DOUGLAS FINLANSON,*)

Defendant.

This action having regularly come on for trial and been heard before Hon. (*Edward R. Finch,*) one of the justices of this court, without a jury, at Special Term, (*Part III*) of this court, held on the (*7th*) day of (*April*, 1916,) upon the pleadings and proceedings herein, the plaintiff having appeared by (*Richard K. Golden,*) his attorney, and the defendant having appeared by (*Hugh MacLean,*) his attorney, and the proofs of both parties having been adduced and their respective counsel heard, and due deliberation having been had thereon, I do decide and find as follows:

FINDINGS OF FACT

- I.
- II.
- III.

and do further decide as

CONCLUSIONS OF LAW

- I.
- II.
- III.

IV. That the (*plaintiff*) is entitled to judgment * * *

Dated,

(*EDWARD R. FINCH,*)

J. S. C.

Dismissing Complaint on Merits — Trial Term

FORM No. 314

Decision — Dismissing Complaint on the Merits — Trial Term
(CITY COURT OF THE CITY OF NEW YORK,)

(THE McVICKAR COMPANY,)

Plaintiff,

against

(MARKET NATIONAL BANK OF
NEW YORK,)

Defendant.

The issues in this action duly coming on to be tried before the undersigned, one of the justices of this court, and a jury at a Trial Term thereof, held on the (15th) day of (*February*, 1915,) at the court house thereof, (*No. 32 Chambers street, in the Borough of Manhattan, City of New York,*) and the issues having been duly tried on said day, and the allegations and evidence of the parties having been heard, and the plaintiff and the defendant having thereupon at the close of the evidence each moved for a direction of a verdict, and the court having thereupon, by consent of all parties, duly given in open court and entered in the minutes, discharged the jury and reserved its decision on said motions; now, after hearing (*Burton Williams*,) of counsel for the plaintiff, and (*Charles Ferguson*,) of counsel for the defendant, and due deliberation having been had, I decide and find as follows:

FINDINGS OF FACT

I. That the plaintiff is a domestic corporation created by, existing and doing business under the laws of the State of New York, having its principal place of business in the *Borough of Manhattan, City of New York*, and was at all the times hereinafter mentioned the owner in fee of the premises known as 3 Park Place, in the *Borough of Manhattan, in the City of New York*.

II. That the defendant is a domestic corporation created by and existing under the laws of the United States of America, having been duly organized as such under the National Bank Act, and having its principal place of business in New York City.

Dismissing Complaint on Merits—Trial Term

III. That the defendant was heretofore engaged in business as a national bank in the Borough of Manhattan, in the *City of New York*, and was so engaged from *June 2d*, 1914, until the month of *February*, 1915, when a receiver of said bank was appointed by the Comptroller of the Currency pursuant to said *National Bank Act*.

IV. That the certificate of organization of the defendant was filed with the Comptroller of the Currency on the 19th day of *May*, 1914.

V. That its incorporators met and organized on the 27th of *May*, 1914, by electing *Thomas Wilson*, president, and *John Peters*, cashier.

VI. That the certificate of the Comptroller of the Currency authorizing the defendant to commence the business of banking was issued on the 2d day of *June*, 1914, and authorized the defendant to commence the business of banking on said 2d day of *June*, 1914, and that the defendant had no authority to engage in or transact business prior to the said 2d day of *June*, 1914.

VII. That on the 27th day of *May*, 1914, the plaintiff and the defendant entered into a lease in writing, dated the 1st day of *May*, 1914, whereby plaintiff leased and demised to the defendant a portion of the ground floor of the premises, 3 *Park Place*, in the *Borough of Manhattan*, in the *City of New York*, for use as a banking office; that said letting was for a term of five years to commence on the 1st day of *May*, 1914, and was upon the yearly rent of \$9,000, payable in equal monthly instalments of \$750 each on the 1st day of each month in advance.

VIII. That the defendant entered into possession and enjoyment of the demised premises under said lease on or about the 10th day of *May*, 1914, and continued in the actual occupation thereof until the month of *February*, 1915.

IX. That the plaintiff executed said lease prior to the 27th day of *May*, 1914, and delivered the same to the defendant for execution; that on the 27th day of *May*, 1912, the said defendant by its president and cashier executed said lease and delivered the same to the defendant corporation on said day, and the said lease was thereupon accepted and retained by the plaintiff.

X. The defendant paid the rent of the said premises for the month of *May*, 1914, and for each and every month thereafter to *January*, 1915, in advance as required by the terms of said lease.

Dismissing Complaint on Merits — Special Term

CONCLUSIONS OF LAW

I. That the defendant in this action was not at the time of the execution and delivery of the lease set forth in the complaint authorized by the Comptroller of the Currency to commence the business of banking.

II. That the execution of the lease set forth in the complaint by the defendant was not incidental and necessarily preliminary to its organization and to its entering upon the business of banking.

III. That the defendant corporation not being authorized to commence business, had no authority to execute and deliver the lease set forth in the complaint on the 27th day of May, 1914, or to legally bind the defendant corporation thereby; that the act of the officers in executing and delivering said lease on said day was null and void.

IV. That the defendant is entitled to judgment dismissing the complaint of the plaintiff on the merits, with costs, which are hereby awarded to the defendant and against the plaintiff to be taxed, and I hereby direct judgment accordingly.

Dated, (*New York, February 24th, 1915.*)

(*WILLIAM L. RANSOM,*)

Justice of the (*City Court of the city of New York.*)

FORM No. 315

Decision Dismissing Complaint — Special Term

SUPREME COURT,
(*New York*) County.

(*CLARENCE D. BALDWIN,*)
Plaintiff,

against

(*JOHN J. McGRATH, Impleaded*
with TERENCE Mc DONNELL,)
Defendants.

This action having come on for trial by the court at a Special Term held by the undersigned without a jury on the (18th) day

Dismissing Complaint on Merits — Special Term

of (*January*, 1916,) and the defendant (*John J. McGrath*,) by his counsel, having moved for judgment on the pleadings, and after hearing (*Charles F. Brown*,) Esq., counsel for said defendant, in support of said motion, and (*Lucius H. Beers*,) Esq., counsel for plaintiff, in opposition, and upon due deliberation I find and decide that the complaint (*and supplemental complaint*) herein (*do*) not state facts sufficient to constitute a cause of action, and I accordingly direct judgment to be entered herein dismissing the complaint (*and the supplemental complaint*,) with costs to said defendant to be taxed.

(*EDWARD R. FINCH*,)

Justice of the Supreme Court
of the State of New York.

ALLOWANCE TO ATTORNEY

FORM No. 316

Notice of Motion for Allowance — to Guardian ad Litem

SUPREME COURT,
(*New York*) County.

(*GERMAN TRUST COMPANY, as
Substituted Trustee of the Trusts cre-
ated by the Last Will and Testament
of WILLIAM FRENCH, deceased,*)

Plaintiff,

against

(*ROBERT WILSON and others,*)
Defendants.

Sirs:

PLEASE TAKE NOTICE that on the annexed affidavit of (*Francis Ackerman*) sworn to the (26th) day of (*July, 1916,*) and on the pleadings and all papers and proceedings herein, the undersigned will move this Court at a Special Term (*Part I*) thereof, to be held at the County Court House, in the (*Borough of Manhattan, City of New York*) on the (31st) day of (*July, 1916,*) at 10:30 o'clock A. M., or as soon thereafter as counsel can be heard, for an additional allowance as guardian *ad litem* and for such other and further relief as may be just and proper.

Dated, (*New York, July 25th, 1916.*)

(*FRANCIS ACKERMAN,*)

Guardian *ad litem* for (*ROBERT and JANE
WILSON,*)

Defendants,

Office and Post-Office Address,

(*3 Broadway,*)

(*Manhattan, New York City.*)

To

(*THOMAS TITCOMB,*) Esq.,
Attorney for (*Plaintiff.*)

Affidavit

FORM No. 317

Affidavit for Allowance to Guardian ad litem

SUPREME COURT,
(*New York*) County.

(*GERMAN TRUST COMPANY, as
Substituted Trustee of the Trusts cre-
ated by the Last Will and Testament
of WILLIAM FRENCH, deceased,*)

Plaintiff,

against

(*ROBERT WILSON and others,*)
Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*FRANCIS ACKERMAN,*) being duly sworn, deposes and says: that he is an attorney at law having his office at (*No. 3 Broadway in the Borough of Manhattan, City of New York.*)

That he is the guardian *ad litem* of (*two*) of the infant defendants in the above-entitled action, namely (*ROBERT WILSON and JAMES WILSON.*)

That the action was brought to (*partition certain real estate situated in the City of New York and left by Robert Wilson.*) That the action was begun in the month of (*January, 1914,*) and has proceeded to judgment and (*a sale of the premises has been had by the referee in partition, the premises being sold for (\$300,000).*) The amount for distribution under the final judgment will be in the neighborhood of (\$200,000) in which sum deponent's (*infants*) have a vested interest of (\$30,000.00.)

That in connection with his duties as guardian *ad litem* (for *said infants*, deponent advised himself of the rights of his wards; had several conversations with plaintiff's attorneys, examined the wills of Robert Wilson, Mary Wilson and William French, the last mentioned will being the will under which said infant defendants derive their interest; examined carefully the complaint and prepared the usual infant's answer. He also attended upon

Affidavit

the reference upon title; he also filed exceptions to the referee's report, which exceptions were sustained by the Court, the claim of a defendant that a legacy of \$5,000 should be charged upon the real estate of William French being disallowed by the Court; also examined carefully all the papers served upon him in the suit, including the application for reference; referee's report; motion to substitute new parties; motion to confirm referee's report and interlocutory judgment; and he also examined carefully the law as to when general legacies are chargeable upon the real estate.)

Deponent further says that his services in this matter were not the ordinary routine services of a guardian *ad litem*, but were arduous and included, as above stated, appearances in Court and examination of law.

In view of the amount involved, deponent believes that the sum of (\$250) is a reasonable allowance in addition to costs for the services performed by him and he therefore asks for such additional allowance.

(FRANCIS ACKERMAN.)

Sworn to before me, this }
(26th) day of (July, 1916.) }

(ARTHUR PEARSON,)

Notary Public,

(New York) County.

Affidavit

FORM No. 318

Affidavit for Allowance to Attorney

SUPREME COURT,
(*New York*) County.

(*GERMAN TRUST COMPANY, as
Substituted Trustee of the Trusts cre-
ated by the Last Will and Testament
of WILLIAM FRENCH, deceased,*)

Plaintiff,

against

(*ROBERT WILSON and others,*)
Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*CHARLES W. RALSTON,*) being duly sworn, deposes and says; that he is an attorney-at-law and one of the firm of (*Ralston & Rice,*) having an office at (*32 Liberty Street, Borough of Manhattan, New York City;*) that the said firm represents in this action the defendant (*Walter Johnson and did represent his wife, Sarah, until the day of her death.*) This action was brought to (*partition certain real estate situated in the City of New York and left by Robert Wilson.*) The action was begun in (*January 1914,*) and said firm appeared on (*February 1, 1914,*) for the above-named defendants. That in many respects the services rendered in this action were not ordinary routine services. That various motions had to be made and argued and various lengthy consultations had and efforts made to obtain adjournment of sale, and that there were many questions of law involved. That deponent's firm was engaged substantially (*forty (40) days*) in work on this suit. That (*prior to February 1st said firm examined the summons and complaint herein, and the will of Robert Wilson, and questions of law arising therefrom. That on February 1st we drew the notice of appearance for both defendants and served the same, and on July 17, 1914, we received and examined a notice of motion for the reference returnable July 23d.*) On August 9th a copy of the order appointing the referee and notice of entry

Affidavit

were served upon us and examined. We received a notice of hearing before the referee for August 28th, at 10:30 A. M. On the 28th of August we attended the same. The hearing was adjourned to September 6th, and again adjourned to September 7th and again adjourned to the 11th of September. On the 11th of September we attended the hearing and the same was closed. On November 12th we received and examined a copy of the referee's report and notice of filing. On November 20th we received notice of exceptions to the report and examined the same. On November 23d we received notice of motion for judgment returnable on November 28th. On November 21st one of the defendants Mary T. Rogers died. On February 28th motion for judgment was adjourned to the 30th of November and on November 30th the said motion was withdrawn. On December 1st deponent's firm drew and served notice of motion to open the reference for December 6th and filed a note of issue of the motion. The same was adjourned to December 7th and new note of issue filed. On December 7, 1914, we attended before Mr. Justice Davis and argued the motion to re-open the reference. Mr. Justice Davis handed down a decision on December 17th. On January 2, 1915, we received a proposed order and notice of settlement returnable January 4th. On January 4th the order was signed by Mr. Justice Davis. On January 5th we received and examined the order and notice of its entry. On March 25th we received and examined notice of motion to substitute the German Trust Company as administrator, c. t. a. of William French and Martha French and examined the same. On March 30th we received and examined copy of the order substituting the said German Trust Company and notice of entry, and on April 11th we received and examined the papers on the motion for judgment. On April 16th the motion for judgment was submitted and on April 20th Mr. Justice Laughlin at Special Term, Part III, handed down a lengthy decision. On June 11th we received the proposed interlocutory decree and notice of settlement for June 13th and examined the same. On June 13th interlocutory decree was submitted to Mr. Justice Weeks, and the next day the interlocutory judgment was signed by him. On June 21st we received copy of the interlocutory judgment and notice of entry and examined the same. On July 6th we received notice of sale for July 17th and subsequently had many consultations in regard to the

Affidavit

adjournment of the sale. The sale was adjourned by consent to July 29th by agreement with the attorneys for the plaintiffs, but the referee refused to adjourn the same and the sale took place on July 17th and the property in question was sold by the referee in three separate parcels for the aggregate sum of \$400,000. The share of Walter Johnson is one-fifth and in view of the amount involved and the labor expended, deponent believes that the sum of (\$500) is a reasonable allowance in addition to the costs, and, therefore, asks for additional allowance.

(CHARLES W. RALSTON.)

Sworn to before me, this }
(29th) day of (July, 1916) }

(EDWARD W. WILCOX,)

Comm. of Deeds, (*New York City.*)

JUDGMENTS

FORM No. 319

Statement and Confession of Judgment

SUPREME COURT,
(New York) County.

(RALPH HAYNES,)

Plaintiff,

against

(WILLIAM JOHNSON and HOW-
ARD BROWN,)

Defendants.

The undersigned, one of the defendants above named, hereby confesses judgment in this action in favor of (*Ralph Haynes*,) plaintiff above named; for the sum of (*three hundred and fifty (\$350)*) dollars, and hereby authorizes him, his heirs, administrators or assigns, to enter judgment therefor against him on or after (*October 15, 1916.*)

This confession of judgment is for a debt justly to become due to the plaintiff on (*October 1, 1916,*) arising upon the following facts:

On the first day of September, 1914, the undersigned made and delivered to the plaintiff his promissory note, of which the following is a copy:

\$350.00

New York, Sept. 1, 1914.

Thirty days after date I promise to pay to the order of Ralph Haynes Three hundred and fifty (\$350) dollars.

Value received.

WILLIAM JOHNSON

The consideration of said note was professional services rendered by plaintiff to the undersigned as his attorney in an action in the Supreme Court, county of Westchester, brought against undersigned by Arthur Morton and others, which action the plaintiff was retained to defend for the agreed sum of three hundred and fifty (\$350) dollars.

(WILLIAM JOHNSON.)

Statement for, on Confession

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*WILLIAM JOHNSON*,) one of the defendants above named,
 being duly sworn, says that he is the defendant making the above
 statement and confession of judgment, and that the matters of
 fact therein set forth, are true.

(*WILLIAM JOHNSON*.)

Sworn to before me, this }
 (25th) day of (*September*, 1916.) }
 (*WILLIAM BARBER*,)
 Notary Public,
 (*New York*) Co.

FORM No. 320

Judgment Entered on Confession — With Bill of Costs*

SUPREME COURT,
 (*New York*) County.

(*RALPH HAYNES*,)
 Plaintiff,

against

(*WILLIAM JOHNSON and HOW-*
ARD BROWN,)
 Defendants.

Statement for Judgment.

Amount confessed \$350 00
 Interest

* UPON ENTRY OF JUDGMENT BY CONFESSION

Cost by statute (§ 1275, Code)	\$15 00
For each additional defendant served, \$2. (§ 3251, subd. 1, Par. 2), each	2 00
Affidavits. (§ 3298, Code), each	12
Transcript of judgment and filing. (§ 3301, Code, Pars. 7 and 8) ..	18
For serving summons and complaint. (§ 3307, subd. 1, Code)	1 00
Clerk's fees on entering judgment. (§ 3301, Par. 3, Code)	50
Postage. (§ 3256, Code) .....	.....
Sheriff's fee on execution. (§ 3307, subds. 6 and 10, Code), and mileage, 10 cents a mile one way, in addition to fee.	1 75
Satisfaction and filing. (§ 3304, subd. 9, Code) and filing	37

On Confession — Costs		
Costs by statute.....	\$15 00	
Affidavits	24	
Transcripts and docketing.....	18	
Clerk's fees entering judgment.....	50	
Postage		
Sheriff's fees on execution.....	2 25	
Satisfaction piece	25	\$18 44
Total		<u>\$368 44</u>

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOSEPH KERNAN*,) being duly sworn, says, that he is managing clerk for the plaintiff's attorney in the above action; that the disbursements above mentioned have been made in said action or will be necessarily made or incurred therein, as he verily believes.

(*JOSEPH KERNAN*.)

Sworn to before me, this }
(16th) day of (*October*, 1915.) }

(*FRANK WHITE*),

Notary Public,

(*New York*) County.

JUDGMENT.

On filing the statement and confession of judgment hereto annexed it is hereby adjudged that (*Ralph Haynes*,) the plaintiff, do recover of *William Johnson*, one of the defendants, the sum of *three hundred and fifty* (\$350) dollars, the amount claimed and interest, with *eighteen and 44/100* (\$18.44) dollars costs and disbursements, amounting in the whole to the sum of *three hundred and sixty-eight and 44/100* (\$368.44) dollars, and that said plaintiff have execution therefor.

(*WILLIAM F. SCHNEIDER*),

Clerk.

On Default in Pleading — Statement

FORM No. 321

Statement and Judgment on Default*

(CITY COURT OF THE CITY OF NEW YORK)

(JOHN JONES,)	}	Statement for judgment
Plaintiff,		
against		
(JOHN DOE and RICHARD ROE,)		
Defendants.		

Amount claimed in (<i>summons</i>)	(\$1,000 00)	—
Interest	(30 00)	—
	(\$1,030 00)	

Costs by statute	(\$15 00)	—
Defendants served with process, \$2 each	(2 00)	
Affidavits (2), (12½¢ each)	(25)	
Transcripts and docketing (always same)	(12)	
Serving complaint and summons	(3 00)	
Clerk's fee entering judgment (<i>City Court</i> , 50 cents)	(50)	
Postage		
Satisfaction piece	(25)	

*ENTRY OF JUDGMENT BY DEFAULT.

Costs by statute. (§ 3251, Subd. 1, Par. 1, Code)	\$15 00
For each additional defendant served, \$2. (§ 3251, Subd. 1, Par. 2) each	2 00
Affidavits. (§ 3298, Code), each	12
Transcript of judgment and filing. (§ 3301, Code, Pars. 7 and 8) . .	18
For serving summons and complaint. (§ 3307, Subd. 1, Code)	1 00
Clerk's fees on entering judgment. (§ 3301, Par. 3, Code)	50
Postage. (§ 3256, Code)	
Sheriff's fee on execution. (§ 3307, Subds. 6 and 10, Code)	1 75
Mileage, a mile, one way, in addition to fee	10
Satisfaction and filing. (§ 3304, Subd. 9, Code) and filing	37

On Default in Pleading

Sheriff's fees on execution (\$1.75, and mileage, 10c a mile).....	(\$2 05)
	(\$24 40)
	(\$1,054 40)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*EZRA WILLIAMS*,) being duly sworn, says, that he is the plaintiff's attorney in the above-entitled action; that the disbursements above mentioned, have been made in said action, or will be necessarily made or incurred therein; that the time for the defendant to appear, answer or demur herein has expired, and that said defendant has not appeared or answered or demurred herein, except.....

(*EZRA WILLIAMS*.)

Sworn to before me, this }
(12th) day of (*May*, 1914). }

(*THEODORE RYAN*,)

Notary Public,

(*New York*) County, No. (326).

JUDGMENT.

Entered (*May 12*, 1914.) The summons (*and complaint*) in this action having been personally served on (*John Doe and Pichard Roe*,) the defendants on the (5th) day of (*May*, 1914,) and the time for said defendants to appear, answer or demur herein having fully expired and said defendants not having appeared or answered or demurred herein except.....

NOW ON MOTION of (*Ezra Williams*,) plaintiff's attorney, it is hereby adjudged that (*John Jones*,) the plaintiff, do recover of (*John Doe and Richard Roe*,) the defendants, the sum of (*ten hundred and thirty dollars*) (\$1,030.00), the amount claimed and interest, with (*twenty-four and 45/100 dollars* (\$24.45)) costs and disbursements, amounting in the whole to the sum of (*ten hundred fifty-four and 45/100 dollars* (\$1,\$54.45)), and that said plaintiff have execution therefor.

(*THOMAS F. SMITH*,)

(SEAL.)

Clerk.

For Sum of Money

FORM No. 322

Judgment for Sum of Money

(CITY COURT OF THE CITY OF NEW YORK.)

(HENRY MANN,)

Plaintiff,

against

(JOHN ANDERSON,)

Defendant.

The issues in the above-entitled action having come on for trial before Honorable (*Edward B. La Fetra*,) one of the Justices of this Court and a jury at Trial Term, (*Part V*,) of this Court, and the jury having returned a verdict in favor of *the (plaintiff)* and against *the (defendant)* for the sum of (*three hundred dollars (\$300,)*) and the costs of the plaintiff having been taxed at (*one hundred and five and 02/100 (\$105.02)*) dollars.

NOW, on motion of (*Charles H. Clinton*,) attorney for plaintiff,

IT IS ADJUDGED, that the (*plaintiff, Henry Mann*,) do recover of the (*defendant, John Anderson*,) the sum of (*three hundred (300)*) dollars, together with (*one hundred and five and 02/100 (\$105.02)*) dollars costs as taxed, making in all the sum of (*four hundred and five and 02/100 (\$405.02)*) dollars, and that said (*plaintiff*) have execution therefor.

Dated, (*October 15, 1914*,)

(*THOMAS F. SMITH*,)

Clerk.

Dismissing Complaint—Trial Term

FORM No. 323

Judgment Dismissing Complaint—Trial Term

SUPREME COURT,
(*New York*) County.

(*CATHERINE DE WOLF*,)
Plaintiff,

against

(*SIMEON FORMAN* and *SAMUEL*
T. SHAWMAN,)
Defendants.

Judgment, (*November 16, 1915.*)

The summons herein having been personally served on the defendants, who appeared by (*John C. Gulich*) as their attorney, and the complaint having thereupon been served and the defendants having served their answer, and the issues thus raised having come on for trial on the (*14th*) day of (*November, 1915*) at a Trial Term of this Court, (*Part X*) before Mr. Justice (*Mitchell L. Erlanger*,) and a jury, and the defendants having moved on the pleadings to dismiss the complaint and the same having been dismissed, and the defendants' costs having been duly adjusted on notice at the sum of (*One hundred and fourteen and 32/100*) dollars, now on the summons and pleadings herein, and on reading and filing a certified copy of the clerk's minutes, showing such dismissal, and on motion of (*John C. Gulich*,) defendants' attorney, it is

ADJUDGED, that this action be and the same is hereby dismissed, and that the defendants, (*Simeon Forman* and *Samuel T. Shawman*,) recover of the Plaintiff, (*Catherine De Wolf*,) the sum of (*One hundred and fourteen and 32/100*) dollars costs as taxed, and have execution therefor.

(*WILLIAM F. SCHNEIDER*,)

Clerk.

(SEAL.)

Dismissing Complaint — Special Term

FORM No. 324

Judgment Dismissing Complaint — Special Term

At a Special Term, (*Part III*,) of the Supreme Court, held in and for the County of (*New York*,) at the County Court House, in said County, on the (3rd) day of (*February*, 1916:)

PRESENT:

Hon. (*EDWARD R. FINCH*,)

Justice.

(*CLARENCE D. BALDWIN*,)

Plaintiff,

against

(*JOHN J. McGRATH*, impleadedwith *TERRENCE McDONNELL*,)

Defendants.

This action having duly come on for trial before Mr. Justice (*Edward R. Finch*,) at a Special Term, (*Part III*,) of this Court, held on the (18th) day of (*January*, 1916,) at the County Court House in the County of (*New York*,) and the defendant (*John J. McGrath*) having moved for judgment on the pleadings, and the court having heard the parties thereon, and after due deliberation having made and filed on the (2nd) day of (*February*, 1916,) a decision in favor of the defendant, (*John J. McGrath*,) and against the plaintiff, directing judgment as hereinafter stated, with costs to said defendant against the plaintiff, to be taxed,

NOW, on motion of (*Sol. A. Cohn*,) Esq., attorney for said defendant (*John J. McGrath*,) it is

ADJUDGED, that the complaint (*and supplemental complaint*) of the plaintiff be and the same hereby (*are*) dismissed, and that said defendant (*John J. McGrath*) recover of the plaintiff his costs, as taxed, amounting to the sum of (*Three hundred, twenty-nine and 66/100 dollars* (329.66,)) and that he have execution therefor.

Judgment signed and entered this (3d) day of (*February*, 1916.)

(*EDWARD R. FINCH*,)

J. S. C.

(*WILLIAM F. SCHNEIDER*,)

Clerk.

Dismissing Complaint on Merits — Trial Term

FORM No. 325

Judgment Dismissing Complaint Upon the Merits — Trial Term

SUPREME COURT,
(*New York*) County.

(*JOHN R. BAKER,*)

Plaintiff,

against

(*CHARLES J. PRANKARD,*)

Defendant.

The issues in this action having been brought on for trial before Mr. Justice (*Samuel Greenbaum,*) and a jury at a Trial Term, (*Part III,*) of this Court, held on the (*15th*) day of (*February,* 1916,) at the County Court House in the (*Borough of Manhattan, City of New York,*) and the issues having been duly tried, and the plaintiff and the defendant having thereupon at the close of all of the evidence each moved for a direction of a verdict; and the court having thereupon, by consent of all the parties, duly given in open court and entered in the minutes, discharged the jury, and reserved its decision on the said motions; and the Court having, after due deliberation, duly directed judgment in favor of the defendant, and against the plaintiff, dismissing the plaintiff's complaint upon the merits, with costs, and having thereafter, on the (*24th*) day of (*February,* 1916,) duly made and filed a decision in favor of the defendant, and against the plaintiff, containing a statement of the facts found and the conclusions of law thereon, and directing judgment in favor of the defendant, and against the plaintiff, dismissing the complaint upon the merits, with costs, and defendant's costs having been duly adjusted at (*eighty-five*) dollars and (*eighteen*) cents:

NOW, on motion of (*Benjamin F. Butler,*) attorney for defendant, it is

ADJUDGED, that the plaintiff's complaint be, and the same is hereby dismissed, upon the merits, and that the defendant, (*Charles J. Prankard,*) do recover of the said plaintiff, costs of this action as taxed and that execution issue therefor, for the sum of (*eighty-five and 18/100 (\$85.18)*) dollars.

Dated, (*February 24,* 1916.)

(SEAL.)

(*WILLIAM F. SCHNEIDER,*)

Clerk.

COSTS

The following are ready references as to *amounts* of costs and disbursements. They are given in the order of the usual printed blank of bill of costs.

BILL OF COSTS

COSTS BEFORE NOTICE OF TRIAL:

to plaintiff, if action enumerated in § 420 of the Code	\$15 00
(§ 3251, Code, subd. 1.)	
in every other action	25 00
(§ 3251, Code, subd. 1.)	
to defendant, usually, ...	10 00
(§ 3251, Code, subd. 2; § 3258.)	

COSTS AFTER NOTICE OF TRIAL 15 00

to either party, usually,	
(§ 3251, Code, subd. 3, par. 1.)	
if two trials	30 00

ADDITIONAL DEFENDANTS SERVED, up to ten, for each . . .	2 00
above ten, for each	1 00
to plaintiff (§ 3251, Code, subd. 1, par. 2).	

TRIAL FEE, ISSUE OF FACT. (For each trial)	30 00
to either party (§ 3251, Code, subd. 3, par. 5).	

TRIAL FEE, ISSUE OF LAW	20 00
to either party (§ 3251, Code, subd. 3, par. 4).	

ALLOWANCE BY STATUTE

to plaintiff in foreclosure, partition and adjudication upon will or other instrument, determination of claim to real property (including foreclosure of mechanic's lien) or where there has been a warrant of attachment.	
10 per cent. if sum not over \$200.	
5 per cent. on next \$400.	
2 per cent. on next \$1,000.	
(§§ 3252, 3254, Code.)	

ALLOWANCE BY COURT

to either party (§ 3253, Code).	
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Items and Amounts	
MOTION, usually	\$10 00
to either party (§ 3251, Code, subd. 3, par. 9; § 3251, Code, subd. 1, par. 4).	
ORDER OF PUBLICATION	10 00
to plaintiff (§ 3251, Code, par. 4).	
TRIAL OCCUPIED MORE THAN TWO DAYS.....	10 00
to either party (§ 3251, Code, subd. 3, par. 5).	
PROCURING INJUNCTION ORDER OR AN ORDER OF ARREST	10 00
(§ 3251, Code, subd. 1, par. 5).	
APPOINTMENT OF GUARDIAN OF INFANT DEFENDANT..	10 00
to plaintiff (§ 3251, Code, subd. 1, par. 3).	
EXAMINATION OF PARTY BEFORE TRIAL.....	10 00
to either party (§ 3251, Code, subd. 3, par. 2).	
ATTENDING AND TAKING DEPOSITION <i>De Bene Esse</i> ..	10 00
to either party (§ 3251, Code, subd. 3, par. 2).	
DRAWING INTERROGATORIES TO ANNEX TO COMMISSION.	10 00
to either party (§ 3251, Code, subd. 3, par. 3).	
MAKING AND SERVING CASE.....	20 00
to either party (§ 3251, Code, subd. 3, par. 6).	
MAKING AND SERVING AMENDMENTS TO CASE.....	20 00
to either party (§ 3251, Code, subd. 3, par. 7).	
MAKING AND SERVING CASE OF MORE THAN 50 FOLIOS.	30 00
to either party (§ 3251, Code, subd. 3, par. 6).	
TERM FEES:	
Supreme Court:	
\$10.00 for each term not exceeding five, includ- ing term at which case is tried.	
to either party (§ 3251, Code, subd. 3, par. 11).	
City Court:	
only one term fee allowed.	
Appellate Division (§ 3251, Code, subd. 4, par. 4), \$10 for each term not exceeding five, excluding term at which case is argued.	
in First Department, October to June is one term.	
Court of Appeals (§ 3251, Code, subd. 5, par. 3), \$10 for each term not exceeding ten, excluding term at which case is argued.	
January to January is one term.	
motion for new trial, upon a case, or an application for judgment upon a special verdict.	

Taxable Disbursements

TERM FEES — Cont.

to either party (§ 3251, Code, subd. 3, par. 8; § 3251, Code, subd. 4).	
upon a case before argument.....	\$20 00
upon a case for argument.....	40 00
PROCEEDINGS BEFORE AND AFTER GRANTING NEW TRIAL.....	25 00
to either party (§ 3251, Code, subd. 3, par. 10).	
APPLICATION FOR JUDGMENT ON SPECIAL VERDICT, BEFORE ARGUMENT	20 00
to either party (§ 3251, Code, subd. 3, par. 8, subd. 4).	
APPLICATION FOR JUDGMENT ON SPECIAL VERDICT, FOR ARGUMENT	40 00
to either party (§ 3251, Code, subd. 3, par. 8; § 3251, Code, subd. 4).	
APPEAL TO APPELLATE DIVISION, BEFORE ARGUMENT.	20 00
to either party (§ 3251, Code, subd. 4).	
APPEAL TO APPELLATE DIVISION, FOR ARGUMENT....	40 00
to either party (§ 3251, Code, subd. 4).	
APPEAL TO COURT OF APPEALS, BEFORE ARGUMENT...	30 00
to either party (§ 3251, Code, subd. 5, par. 1).	
APPEAL TO COURT OF APPEALS, FOR ARGUMENT.....	60 00
to either party (§ 3251, Code, subd. 5, par. 2).	
PREPARING CASE ON APPEAL TO COURT OF APPEALS..	....
(§ 3251, Code, subd. 3.)	
DAMAGES IN COURT OF APPEALS FOR DELAY.....	....
not exceeding 10 per cent. of the amount of the judgment to either party (§ 3251, Code, subd. 5, par. 4).	
INTEREST ON VERDICT .....	....

DISBURSEMENTS

PAID FOR SEARCHES .....	....
(§§ 3256, 3304, Code.)	
PAID REFEREE'S REPORT .....	....
(§§ 3256, 3296, Code.)	
PAID REFEREE'S FEES .....	....
(§§ 3256, 3296, 3297, Code.)	

Taxable Disbursements	
COMMISSIONER'S FEES .....	....
(§ 3256, Code.)	
CLERK'S FEES ON TRIAL.....	\$1 00
(§ 3301, Code, par. 2, § 3304.)	
CLERK'S FEES ON FILING NOTICE OF PENDENCY OF ACTION .....	....
10 cents a folio.	
to plaintiff (§ 3304, Code, par. 6).	
CLERK'S FEES ENTERING JUDGMENT, usually.....	50
(§ 3301, Code, par. 3.)	
AFFIDAVITS AND ACKNOWLEDGMENTS.....	....
(§ 3298, Code.)	
affidavits, 12 cents each.	
acknowledgments, 25 cents for one person, and each additional person 12 cents.	
SERVING COPIES SUMMONS AND COMPLAINT.....	\$1 00
(§ 3307, Code, subd. 1.)	
by Sheriff, New York, Kings, Bronx, Queens and Richmond Counties	1 50
Mileage, 6 cents a mile going and 6 cents a mile returning .....	....
SATISFACTION PIECE	25
(§ 3298, Code, par. 2, 25 cents.)	
(See § 1261, Code.)	
TRANSCRIPTS AND FILING.....	18
(§ 3301, Code, par. 7, 8; § 3304, Code.)	
CERTIFIED COPY JUDGMENT.....	....
3 cents a folio, a minimum fee 25 cents.	
(§ 3305-a, Code.)	
CERTIFIED COPY ORDERS.....	....
3 cents a folio, minimum fee 25 cents (§§ 3305-a, 3304, Code.)	
POSTAGE .....	....
(§ 3256, Code.)	
JURY FEE (25 cents each).....	3 00
(§ 3313, Code.)	
STENOGRAPHER'S FEES .....	....
under stipulation (§§ 3256, 3311, Code.)	
(See cases cited in Nichol's Practice, § 2140.)	

Taxable Disbursements

SHERIFF'S FEES ON EXECUTION.....	....
In New York, Kings, Bronx, Queens and Richmond Counties, counting in one mile.....	\$1 85
for receiving	\$1 50
for return	25
Mileage, 10 cents for each mile, one way... 10	
(§ 3256, Code.)	
(§ 3307, Code, sub. 6.)	
(§ 3307, Code, subd. 10.)	
SHERIFF'S FEES ON EXECUTION:	
generally, (one mile).....	72
(§§ 3256, 3307, subd. 6, 3307, subd. 10, Code)	
for receiving.....	50
for return.....	12
mileage.....	10
mileage, 10 cents each mile, one way.....	10
SHERIFF'S FEES ON ATTACHMENT OR REPLEVIN:	
(§ 3307, Code, subds. 2 and 7.)	
In New York, Kings, Bronx, Queens and Richmond Counties:	
for levying warrant without summons.....	5 25
for levying warrant with summons.....	7 00
for service of each additional warrant.....	1 50
mileage, 12 cents a mile, one way.	
replevin:	
executing requisition	8 00
mileage, 12 cents a mile, one way.	
outside such named counties for levying warrant	
without summons	1 00
for levying warrant with summons.....	2 00
for service of each additional warrant.....	....
mileage . . . . .	....
replevin:	
executing requisition	1 00
Such additional compensation for the sheriff's trouble and expenses in taking possession of and preserving the property, as the judge issuing the warrant or in case of a replevin as the court or a judge allows, and the judge or court may make an order requiring the party liable therefor to pay the same to the sheriff.	

Taxable Disbursements

SHERIFF'S FEES ON ATTACHMENT OR REPLEVIN — Cont.

For other fees on attachment and replevin, see
§ 3307, subd. 2.

SHERIFF'S TERM FEE \$0 50
(§ 3307, Code, subd. 4.)

In New York County, this is included in fee paid
for filing note of issue in jury cases. In most
counties this is the only fee that has to be paid
on filing such note of issue.

CORONER'S FEES ON EXECUTION.....
same as sheriff (§ 3310, Code).

EXTRACT FROM MINUTES, usually..... 10
5 cents for each folio. (§ 3301, Code, par. 5.)

PAID PRINTING CASES
(§ 3256, Code.)

PAID PRINTING POINTS.....
(§ 3256, Code.)

PAID COPY OF STENOGRAPHER'S MINUTES.....
(§ 3256, Code.)

(See cases cited in Nichol's Prac., § 2140.)

Where party desires to tax as a disbursement copy
of stenographer's minutes, the affidavit should be
very full showing that they are necessary to
enable the party to prepare his case or propose
amendments to his opponent's case.

PAID COPIES FOLLOWING PAPERS.....
(§§ 3256, 3301, 3304, Code.)

Where the final judgment in an action allows for
printing and stenography, these items may be
taxed as disbursements.

Where there are more than ten defendants, the
expense for printing the summons and complaint
may be taxed.

CLERK'S FEES FOR TAXING COSTS.....
charged in some counties (not in New York) at... 25

FILING RETURN TO COURT OF APPEALS..... 50
(§ 3300, Code.)

PAID UPON FILING NOTE OF ISSUE (NEW YORK
COUNTY).

not provided for in some blanks. (Variable.)

Taxable Disbursements

ATTENDANCE OF FOLLOWING WITNESSES:

fee, 50 cents a day, and mileage, 8 cents a mile,
one way.

..... () days, () miles.

..... () days, () miles.

..... () days, () miles.

The following are not contained on the ordinary
printed blank for bills of cost, but should not be
overlooked. (§§ 3256, 3318, Code.)

PAID FOR PUBLICATION OF SUMMONS, ETC.....
(§ 3256, Code.)

SURVEYOR IN PARTITION OR DOWER.....
to either party (§§ 1682, 3256, 3257, 3299, Code.)

MOTION FOR NEW TRIAL WITHOUT A CASE, usually.... \$10 00
to either party (§ 3251, Code, subd. 3, par. 9.)

APPLICATION FOR JUDGMENT RENDERED AND SUBJECT
TO OPINION OF THE COURT, FOR ARGUMENT....
(§ 3251, Code, subd. 4.)

EXCEPTIONS ORDERED HEARD AT APPELLATE DIVISION
IN FIRST INSTANCE, BEFORE ARGUMENT.....
(§ 3251, Code, subd. 4.)

EXCEPTIONS ORDERED HEARD AT APPELLATE DIVISION,
FOR ARGUMENT
(§ 3251, Code, subd. 4.)

APPEAL FROM INTERLOCUTORY JUDGMENT OR ORDER
OF THE CITY COURT OF NEW YORK..... 10 00
(§§ 3251, Code, 4, par. 4; § 3189.)

IN A CASE FOR INCREASED COSTS, ONE-HALF ADDI-
TIONAL
(§§ 3258, 3259, Code.)

PAID REFEREE SETTLING CASE.....

CLERK'S FEES FOR REMITTITUR.....

RECORDING MORTGAGE IN FORECLOSURE RULE.....
(Public Officers Law, § 68.)

FILING NOTICE OF APPEAL, Court of Appeals..... 50
(§ 3300, Code, par. 2.)

PAID FOR REMITTITUR, Court of Appeals (10 cents a
folio)
(§ 3300, Code.)

Taxable Disbursements

PAID FOR CERTIFIED TRANSCRIPTS OF JUDGMENT, etc.	
12 cents each .....	....
FILING MECHANIC'S LIEN.....	\$0 20
PAID CERTIFYING PRINTED RECORD ON APPEAL (one	
cent a folio) .....	....
(§ 3301, subd. 6, Code.)	

MOTION FOR NEW TRIAL

FORM No. 326

Order Denying Motion for New Trial

At a Trial Term, (*Part X*,) of the Supreme Court, held
in and for the County of (*New York*,) at the County
Court House in the (*Borough of Manhattan, City of*
New York,) on the (22*d*) day of (*October*, 1915.)

PRESENT:

Hon. (*JOHN FORD*,)

Justice.

(*JOHN NICHOLS*,)

Plaintiff,

against

(*JOHN ROSS*,)

Defendant.

The issues in this action having come regularly on for trial before the Hon. (*John Ford*,) one of the Justices of this court and a jury, at a Trial Term, (*Part X*,) of this court, on the (20*th*) day of (*October*, 1915,) and the same having been duly tried, and the jury having rendered a verdict in favor of the (*plaintiff*) and against the (*defendant*) for the sum of (\$25,000,) and the (*defendant*) having moved to set aside the verdict and for a new trial upon the ground that the same was against the weight of evidence and contrary to law, and on all the grounds as specified in section 999 of the Code of Civil Procedure; [*except those inapplicable to the case.*]

After hearing Mr. (*Raymond Rossiter*,) of counsel for the defendant, and in favor of the motion, and Mr. (*John Thompson*,) of counsel for the plaintiff, in opposition thereto;

NOW, on motion of (*Raymond Rossiter*,) attorney for the defendant, it is

ORDERED, that the said motion be and the same hereby is denied.

Enter,

(*J. F.*,)

J. S. C.

Order Denying

FORM No. 327

Order Denying Motion for New Trial

At a Trial Term, (*Part XII*), of the Supreme Court, held in and for the County of (*New York*) at the County Court House in the (*Borough of Manhattan, City of New York*), on the (*10th*) day of (*February, 1914*.)

PRESENT:

Hon. (*EUGENE A. PHILBIN*),

Justice.

(*JOHN ARMAN*),

Plaintiff,

against

(*THE UNITED SURETY COMPANY*),

Defendant.

This action having been tried before the Court and a jury at a Trial Term (*Part XII*) of this Court, held in and for the County of (*New York*), at the County Court House, in the (*Borough of Manhattan, City of New York*), on the (*9th, 10th and 11th*) days of (*November, 1913*), and the allegations and proofs on the part of the plaintiff having been heard and the defendant having moved to dismiss the complaint on the ground that the plaintiff had failed to sustain the cause of action set forth in the complaint, and had failed to sustain any cause of action set forth in the complaint, and had failed to sustain any cause of action, and (*the Court having suggested that it proceed to hear defendant's allegations and proofs and the defendant's allegations and proofs having been heard, and thereafter the defendant having renewed his motion to dismiss, and having at that time also moved that a verdict in its favor be directed by the court, and the court having submitted the following questions to the jury:*

1. *Did the plaintiff, on August 5, 1908, take actual, open and public possession of the chattels pledged to him by the Busy Manufacturing Company?*

Order Denying

2. If the plaintiff did take such actual, open and public possession of the chattels, did he retain such possession openly and continuously until the Sheriff took possession of the chattels?

3. What damage did the plaintiff suffer, if he was owner of the property, through its taking by the Sheriff?) And the Court having reserved decision on the motion to dismiss the complaint (until the coming in of the verdict of the jury thereon, and the jury having answered "yes" to the first and second questions, and in answer to the third question having assessed the plaintiff's damage at \$4,611.20 and it having been stipulated in open court that the jury might be discharged and that upon the hearing of the motion to dismiss the complaint a general verdict be entered upon the minutes as if the jury were actually present,) and thereafter such argument having been had and the court after due deliberation having by an order entered herewith on the 29th day of January, 1914, nonsuited the plaintiff, and plaintiff having duly excepted thereto, and a motion having been made by the plaintiff on the minutes of the judge who presided at the trial to set aside the direction nonsuiting the plaintiff and grant a new trial on the exceptions and Mr. (Chauncey S. Truman,) of counsel for plaintiff, having been heard in support of the motion, and Mr. (William J. Griffith,) of counsel for the defendant, in opposition thereto, it is

Ordered, that the said motion be and the same is hereby denied.

It is further ordered, that the plaintiff have sixty days after the entry of the judgment and service of notice thereof upon him or his attorneys in which to make and serve his case on appeal and that the plaintiff have thirty days' stay of execution from such entry and service of such notice.

It is further ordered, that the plaintiff's exception to said nonsuit be entered on the minutes of the trial by the Clerk at said Trial Term, (Part XII.)

Enter,

(E. A. P.,)

J. S. C.

FORM No. 328

Execution Against Property

THE PEOPLE OF THE STATE OF NEW YORK,

To the Sheriff of the County of (*New York*,) Greeting:

WHEREAS, judgment was rendered on the (10th) day of (*March*,) one thousand (*nine*) hundred and (*fifteen*,) in an action in the (*Supreme*) Court, (*New York County*,) between (*William Astor*,) plaintiff, and (*Mitchell Randolph*,) defendant, in favor of the said (*William Astor*) against the said (*Mitchell Randolph*,) for the sum of (*fifteen hundred and sixty*) dollars (\$1,560,) as appears to us by the judgment roll, filed in the office of the Clerk of the (*Supreme Court*,) County of (*New York*,)

AND WHEREAS, the said judgment was docketed in the office of the Clerk of your County on the (2^d) day of (*April*) in the year one thousand nine hundred and (*fifteen*,) and the sum of (*fifteen hundred and sixty*) dollars is now actually due thereon;

THEREFORE, WE COMMAND YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County; or if sufficient personal property cannot be found, then out of the real property in your County belonging to such judgment debtor at the time when the said judgment was so docketed in the office of the Clerk of your County, or at any time thereafter, in whose hands soever the same may be, and return this execution, within sixty days after its receipt by you, to the Clerk of the (*Supreme Court*,) County of (*New York*,).

WITNESS, Honorable (*Vernon M. Davis*,) one of the *justices* of said court, at the (*City of New York*,) the (*third*) day of (*April*,) one thousand nine hundred and (*fifteen*,)

(*JAMES J. MAXWELL*,)

Attorney for Plaintiff,

(*32 Liberty Street*,)

(*Borough of Manhattan*,)

(*New York City*,)

SATISFACTION OF JUDGMENT

FORM No. 329

Release of Judgment — One of Several Defendants Jointly Liable*

SUPREME COURT,
(*Rensselaer*) County.

(*WALTER WING*,)
Plaintiff,
against
(*WILLIAM HENRY, JOSEPH
FENN and THOMAS BENSON*,)
Defendants.

Judgment entered (*May
17th, 1915*,) for
(\$1,000) in favor of
(*plaintiff*.)

JUDGMENT docketed and entered in the judgment book of the Clerk of the County of (*Rensselaer*,) on the (*seventeenth*) day of (*May*,) one thousand nine hundred and (*fifteen*) for the sum of (*one thousand*) dollars damages and costs, in favor of the above-named plaintiff, and against the above-named defendants.

In consideration of (*one dollar*,) to (*me*) in hand paid by (*Thomas Benson*,) one of the defendants against whom judgment was recovered, as aforesaid, in the above-entitled action, the receipt whereof is hereby acknowledged, I do hereby release and discharge the said (*Thomas Benson*) from all and singular the above judgment, and the lien thereof, and all liability on account thereof, but without affecting the said judgment, or the liability thereon of the other defendants, or their right of action against any other joint debtor, or the right to take proceedings against such defendants, and I request the clerk of the Court to release and discharge the said judgment of record as to the said defendant, (*Thomas Benson*) only, according to and as provided by section 1943 of the Code of Civil of Civil Procedure and sections 230 and 231 of the Laws of 1909, chap. 17.

(*WALTER WING*.)

[Acknowledgment]

* See note on release of debt by partner, page 1172.

By Attorney, One of Firm

FORM No. 330

Satisfaction of Judgment—By Attorney, One of the Firm*

SUPREME COURT,
(*Kings*) County.(ANTHONY COLE,)

Plaintiff,

against

(WILLIAM W. GOOD),

Defendant.Judgment entered (*December 31, 1915,*) for the sum of (\$950) in favor of (*William W. Good.*)STATE OF NEW YORK, }

County of (*Kings,*) } ss.:

WHEREAS, a judgment was on the (31st) day of (*December*) in the year nineteen hundred and (*fifteen*) recovered by (*William W. Good,*) the defendant, against (*Anthony Cole*) plaintiff in the above-entitled action, for the sum of (\$950) which judgment was entered on the (31st) day of (*December, 1915,*) in the judgment book, in the office of the clerk of said court, and said judgment has been wholly paid;

THEREFORE, satisfaction of said judgment is hereby acknowledged, and the clerk of said court is hereby authorized and directed to cancel and discharge the same.

(BURR & WILSON,)

By (*James Wilson,*)

Attorneys for Defendant.

STATE OF NEW YORK, }

County of (*Kings,*) } ss.:

On this (*seventeenth*) day of (*March, 1916,*) before me personally came (*James Wilson,*) one of the members of the firm of (*Burr & Wilson,*) to me known and known to me to be one of the attorneys for the (*defendant,*) in the above-entitled action, and to be the individual mentioned in and who executed the above satisfaction of judgment, and he acknowledged to me that he executed the same as and for the act and deed of said firm.

(RICHARD REED,)

Notary Public,

(*Kings*) County, No. (62).

* See § 1260, Code.

More Than Two Years After Entry

FORM No. 331

Satisfaction of Judgment — More Than Two Years After Entry

SUPREME COURT,
(*New York*) County.

(STEPHEN ANSON,) }
Plaintiff,

against

(JOHN C. BALDWIN,) }
Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

WHEREAS, a judgment was on the (*twenty-sixth*) day of (*April*, 1910,) recovered by the plaintiff against the defendant in the above-entitled action for the sum of (*four hundred*) dollars, which judgment was on the (*26th*) day of (*April*, 1910,) duly entered in the judgment book, in the office of the clerk of the above-named court, and the said judgment has been wholly paid;

THEREFORE, satisfaction of said judgment is hereby acknowledged, and the clerk of said court is authorized and directed to cancel and discharge the same.

(STEPHEN ANSON.)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On the (*27th*) day of (*March*, 1915,) before me personally came (*Stephen Anson*,) to me known and known to me to be the (*plaintiff*) in the above-entitled action, and to be the same person described in and who executed the within satisfaction, and acknowledged to me that he executed the same.

(MORRIS CUMMINS,)

Notary Public, No. (452,)

(*New York*) County.

SUPPLEMENTARY PROCEEDINGS*

FORM No. 332

Affidavit to Obtain Order for Examination of Judgment Debtor
(*CITY COURT OF THE CITY OF NEW YORK*).

In the Matter of
Supplementary Proceedings.
(*JOHN JONES*),
Judgment creditor,
against
(*RICHARD ROE*),
Judgment debtor.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*Ezra Williams*), being duly sworn, says, that he is (*the attorney for*) the above-named (*John Jones*), the judgment creditor in this proceeding; that judgment was recovered in an action against the above-named (*Richard Roe*), the judgment debtor herein in the (*City Court of the City of New York*) on the (*12th*) day of (*May*, 1916), for (\$1,054.40) damages and costs after due personal service of the summons therein upon said judgment debtor; that the said judgment was for more than twenty-five dollars; that the judgment roll in said action was filed in the office of the Clerk of (*the City Court of New York*) on the (*12th*) day of (*May*, 1916); that a transcript of said judgment was duly filed, and said judgment was duly docketed in the office of the Clerk of the County of (*New York*) on the (*12th*) day of (*July*, 1916); that thereafter an execution upon said judgment against the property of the said judgment debtor was on the (*12th*) day of (*July*, 1916), duly issued out of the (*City Court of the City of New York*), which is a court of record, to the Sheriff of the County of (*New York*), where said judgment debtor (*then resided and, at the time of the commencement of this special proceeding, still resides*); that the said sheriff has returned said execution (*wholly*) unsatisfied, and that the said judgment remains

* See suggestions, p. 41.

Order for Examination

(*wholly*) unpaid, and that no previous application has been made for this order.

Sworn to before me, this (EZRA WILLIAMS.)
(20th) day of (August, 1916.)

(JOHN RYAN,)

Notary Public,
(New York) County, No. (26).

FORM No. 333

Order for Examination of Judgment Debtor

(CITY COURT OF THE CITY OF NEW YORK.)

In the Matter of Supplementary Proceedings. (JOHN JONES,) Judgment creditor, against (RICHARD ROE,) Judgment debtor.	}
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It appearing to my satisfaction, by the above affidavit of (*Ezra Williams*,) the attorney for the judgment creditor in this proceeding, that judgment has been recovered in an action in the (*City Court of the City of New York*) wherein said (*John Jones*) was (*plaintiff*) and said (*Richard Roe*) was (*defendant*), against the above-named (*Richard Roe*), the judgment debtor herein on the 12th) day of (*May*, 1916), for the sum of (\$1,054.40); that said judgment was rendered upon the personal service of the summons therein upon the said judgment debtor; that the said judgment was for more than twenty-five dollars; that the judgment roll was duly filed in the office of the Clerk of the (*City Court of the City of New York*,) on the (12th) day of (*May*, 1916); that a transcript of said judgment was duly filed, and said judgment was duly docketed in the office of the Clerk of the County of (*New York*) on the (12th) day of (*May*, 1916); that thereafter an execution upon said judgment against the property of the said judgment debtor was on the (12th) day of (*July*, 1916), duly issued out of the (*City Court of the City of New*

Order Appointing Receiver

York), which is a court of record, to the Sheriff of the County of (New York,) where said judgment debtor (*then resided and at the time of the commencement of this special proceeding, still resides*), and that such execution has been returned (*wholly*) unsatisfied, and that said judgment remains (*wholly*) unpaid, and that no previous application has been made for this order; I do hereby order and require (*Richard Roe*), the judgment debtor, to appear before (*me or one of the justices of this court*), * at a Special Term (*Part II thereof*), to be held at the (*Brown Stone*) court house, (*No. 32 Chambers street, City Hall Park, Borough of Manhattan, City of New York*), on the (*26th*) day of (*August, 1916*), at (*10*) o'clock in the (*fore*)noon, and on such further days as the court or referee duly appointed shall name, and make discovery on oath concerning (*his*) property. And the said judgment debtor is hereby forbidden to transfer or make any other disposition of the property belonging to (*him*) not exempt by law from execution, or in any manner to interfere therewith, and until further order in the premises.

Dated at (*Borough of Manhattan, City of New York*), on the (*20th*) day of (*August, 1916*).

(*EDWARD B. LA FETRA,*)

Justice.

FORM No. 334

Order Appointing Receiver in Supplementary Proceedings
(*CITY COURT OF THE CITY OF NEW YORK.*)

In the Matter of Supple-
mentary Proceedings.

(*AUGUST R. ASTON,*)

Judgment creditor,

against

(*JOHN McSWEENEY,*)

Judgment debtor.

Supplementary proceedings having been duly instituted upon the judgment in an action against (*John McSweeney*), the judg-

* [Or Arthur Jones, Esq., Referee, hereby appointed for such examination at his office No. 20 Park Row, New York City.]

Order Appointing Receiver

ment debtor in the above-entitled proceeding; by an order made on the (10th) day of (July, 1916,) by Mr. Justice (Allen,) directing the said (John McSweeney) to appear before him, or one of the justices of this court sitting at Special Term; and the said (John McSweeney) having duly appeared and been examined therein on oath concerning his property in pursuance of said order,

NOW, on filing the affidavit and order of examination herein and the evidence taken thereon; and a motion for the appointment of a receiver of the property of the said judgment debtor having been made at the close of the said examination in the presence of the said judgment debtor by (Charles Colson,) counsel for the judgment creditor, (August R. Aston,) I hereby

ORDER that (Williard Fiske,) Esq., be, and he hereby is, appointed receiver of all the debts, property, equitable interest, rights and interest in any action of the said (John McSweeney,) judgment debtor, that such receiver before he enter upon the execution of the said trust execute to the People of the State of New York a bond, with sufficient sureties, to be approved by me in the penalty of (two hundred) dollars, conditioned that he will faithfully discharge the duties of said trust, and file the said bond with the Clerk of the (City Court of the City of New York,) as required by law, and that the said receiver upon filing such bond be invested with all rights and powers as receiver according to law.

And I also order that the plaintiff, (August R. Aston,) recover the sum of (thirty) dollars costs and (five) dollars, his disbursements in these proceedings to be paid out of any money which has come or may come into his hands as receiver.

Dated, (New York, July 26, 1916.)

(EDWARD B. LA FETRA,)

J. C. C.

This order must be filed in the office of the clerk of the County wherein the judgment roll in the action is filed; or, if the proceeding is founded upon an execution issued out of a Court other than that in which the judgment was rendered, in the office of the clerk of the County wherein the transcript of the judgment is filed. (Section 2467, Code.)

An order of the City Court of New York is filed in the N. Y. County Clerk's office. Seabury's City Court Practice, p. 1062.

Note

The original order of the City Court of the City of New York, appointing a receiver is filed in the office of the Clerk of the City Court and a specified copy is filed in the County Clerk's office; and the receiver's bond should be filed in the County Clerk's office, (*Richmond v. Locke*, N. Y. L. J. December 27, 1915 — McAvoy J.)

..... To reach real property a certified copy of the order appointing the receiver must be filed with the Clerk of the County where the real property is situated. To reach personal property of a judgment debtor not residing in the County where the order is made a certified copy of the order of appointment must be filed in the county where he resides.

Execution Under Section 1391, Code of Civil Procedure

As a basis for the issuance of such an execution two essential facts must be shown:

1. That an execution on the judgment has been returned wholly or partly unsatisfied.

2. That wages, debts, earnings, salary, income from trust funds or profits are due or to become due to the judgment debtor to the amount of or exceeding twelve dollars per week.

Notice need not be given to the judgment debtors. But where income from a trust fund is sought, the trustee is entitled to notice. (*Sloan v. Tiffany*, 103 App. Div. 540, 103 App. Div. 420, 168 App. Div. 100.) Form No. 343 may be used.)

This remedy applies to judgments obtained before the enactment (*Myers v. Moran*, 113 App. Div. 427; *Laird v. Carlton*, 196 N. Y. 169); but not to judgments obtained outside the State. (*Newman v. Mortimer*, 98 App. Div. 64.)

Income derived from a trust fund created by a will probated prior to the enactment may be reached. (*Brearley School v. Ward*, 201 N. Y. 358.)

As to what income can not be reached, see 165 App. Div. 79.

If defendant is discharged in bankruptcy after the issuance of this execution, a motion to modify the execution should be immediately made. (167 App. Div. 259.)

No motion costs are allowed on an application for an order directing the issuance of execution under § 1391. (71 Misc. 530.)

Notice of Application

The only remedy for failure to pay upon presentation of such an execution is by action, such remedy being exclusive. (158 *App. Div.* 695.)

A receiver in Supplementary Proceedings is not a proper or necessary party to an action brought to recover against a trustee who has failed or refused to pay as directed. (165 *App. Div.* 77.)

Under § 1366 of the Code of Civil Procedure it is the duty of the Sheriff or other officer to whom such execution is delivered, from time to time, and at least once every six months to account for and pay over all moneys collected less his fees.

FORM No. 335

Execution Against Income — Notice of Application

SUPREME COURT,
(*New York*) County

(<i>ARTHUR C. EASTON,</i>) Plaintiff and Judgment Creditor, against (<i>WILLIAM S. COOK,</i>) Defendant and Judgment Debtor.
--

Sir:

PLEASE TAKE NOTICE, that upon the judgment roll in this action and upon the annexed affidavits of (*Herbert C. Morton,*) duly verified the (10th) day of (*June,* 1916,) and of (*Samuel Heyward,*) duly verified the (10th) day of (*June,* 1916,) and all the proceedings heretofore had herein, the undersigned will apply at a Special Term (*Part II*) of this court to be held at the County Court House, (*in the Borough of Manhattan, City of New York*) on the (18th) day of (*June,* 1916), at 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order directing that execution issue against ten per cent. of the wages, debts, earnings, salary, income from trust funds or profits due and owing or hereafter to become due and owing from

Affidavit on Application

(*Merchants' National Bank of New York*) to (*William S. Cooper*,) the above-named defendant, and further directing that said execution remain a lien and a continuing levy on such wages, earnings, salary, income from trust funds or profits until such execution and the expenses thereof shall be fully paid and satisfied, or until the same is modified, and for such other and further relief as may to the court seem just.

Dated, (*New York, June 10, 1916.*)

Yours, etc.,

(*LINDSAY & PALMER,*)

Attorney for Plaintiff and Judgment Creditor.

(*30 Broad Street,*)

(*New York City.*)

To

(*Merchants' National Bank
of New York.*)

FORM No. 336

Execution Against Income — Affidavit on Application

SUPREME COURT,

(*New York*) County.

(*ARTHUR C. EASTON,*)

Plaintiff and Judgment Creditor,

against

(*WILLIAM S. COOK,*)

Defendant and Judgment Debtor.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*HERBERT C. MORTON,*) being duly sworn, deposes and says: That he is the attorney for the above named plaintiff and judgment creditor in the above-entitled action.

Affidavit on Application

That on the (8th) day of (May, 1916,) judgment was duly recovered in said action in the (*Municipal Court of the City of New York, Borough of Manhattan, First District,*) in favor of the plaintiff and against the defendant for the sum of (*two hundred (\$200)*) dollars, after due personal service of the summons and complaint on said defendant; that the judgment roll thereof was duly filed in the office of the Clerk of (*said Court*) on the (8th) day of (May, 1916,) that a transcript of said judgment was duly filed and said judgment was duly docketed in the office of the Clerk of the County of (*New York*) on the (9th) day of (May, 1916); that thereafter an execution upon said judgment against the property of said defendant, the judgment debtor herein, was duly issued on the (15th) day of (May, 1916,) out of the (*Supreme Court,*) which is a Court of Record, to the Sheriff of the County of (*New York,*) where said judgment debtor then resided and still resides and that said execution has been returned (*wholly*) unsatisfied and said judgment remains (*wholly*) unpaid; that there is now actually due and unpaid upon said judgment the sum of (*Two hundred (\$200)*) Dollars with interest from (8th) day of (May, 1916); that the judgment debtor (*is employed by The Merchants' National Bank of New York,*) at (*No. 42 Wall Street, in the Borough of Manhattan, City of New York,*) as (*a paying teller,*) and that as deponent is informed and verily believes, he is in receipt of (*wages, earnings and salary*) amounting to the sum of twelve and 00/100 (\$12.00) dollars, or more per week, to wit, the sum of (*twenty-five and 00/000*) (\$25.00) dollars per week, and that the same is payable to him (*weekly*) by the said (*The Merchants' National Bank of New York*), and that the same is now due and owing to the said judgment debtor and shall hereafter become due and owing to him.

That the sources of deponent's information and the grounds of his belief as to (*the wages, earnings and salary*) of the judgment debtor are (*statements made by the judgment debtor in the course of his examination in proceedings supplementary to execution and statements made to your deponent by one of the representa-*

Order

tives of The Merchants' National Bank of New York). That no previous application has been made for this order.

(*HERBERT MORTON.*)

Sworn to before me, this }
(17th) day of (*June*, 1916.) }
(*WILLIAM RIKER*,)
Notary Public,
(*New York*) County.

FORM No. 337

Order Directing Execution Against Income

SUPREME COURT,
(*New York*) County.

(<i>ARTHUR C. EASTON</i> ,) Plaintiff and Judgment Creditor, against (<i>WILLIAM S. COOK</i> ,) Defendant and Judgment Debtor.
--

It appearing to my satisfaction by the annexed affidavit of (*HERBERT C. MORTON*,) attorney for the plaintiff and judgment creditor herein, verified on the (17th) day of (*June*, 1916); that on the (8th) day of (*May*, 1916,) judgment was duly recovered in the above-entitled action in the (*Municipal Court of the City of New York, Borough of Manhattan, First District*,) in favor of the plaintiff, against the defendant, for the sum of (*Two hundred (\$200)*) Dollars after due personal service of the summons and complaint on said defendant; that the judgment roll was duly filed in the office of the Clerk of said court on the

Order

(8th) day of (*May*, 1916); that a transcript of said judgment was duly filed and said judgment roll was duly docketed in the office of the Clerk of the County of (*New York*,) on the (9th) day of (*May*, 1916); that thereafter an execution upon said judgment against the property of the defendant, the judgment debtor, was duly issued on the (15th) day of (*May*, 1916,) out of the (*Supreme Court*,) which is a court of record, to the Sheriff of the County of (*New York*) where said judgment debtor then resided and still resides, and that said execution has been returned (*wholly*) unsatisfied and said judgment remains (*wholly*) unpaid, and there is now actually due and unpaid thereon the sum of (*Two hundred* (\$200)) Dollars with interest from the (8th) day of (*May*, 1916,) that there is due and owing said defendant, the judgment debtor herein, from the (*Merchants' National Bank of New York*) as his (*wages, earnings and salary*) a sum amounting to \$12.00 or more a week, namely, the sum of (\$25.00) Dollars per week and that the same sum by reason of (*said employment*) shall hereafter become due and owing to said judgment debtor; and that no previous application has been made for the order thereby sought.

NOW, on motion of (*Herbert C. Morton*,) attorney for said plaintiff, the judgment creditor, it is hereby

ORDERED that an execution issue herein out of this court to (*the Sheriff*) of the County of (*New York*,) against the (*wages, earnings and salary*) of the above-named defendant and judgment debtor, due and owing to him and which shall hereafter become due and owing to him from the said (*Merchants' National Bank of New York*) pursuant to section 1391 of the Code of Civil Procedure, which execution, when presented by said (*Sheriff*) to the said (*Merchants' National Bank of New York*) shall become a lien and a continuing levy upon the (*wages, earnings and salary*) due and to become due to the said judgment debtor from the said (*Merchants' National Bank of New York*) to an amount which shall not exceed ten per centum thereof and that the said levy shall become a continuing levy until the said execution and the expenses thereof are fully satisfied and paid or until modified as provided for in section 1391 of the Code of Civil Procedure and

Execution

the amount of said levy and lien shall be the sum of (*Two and 50/100*) Dollars per (*week*) and that the Clerk of this Court be and he hereby is

Ordered and directed to issue such execution.

(*LEONARD A. GIEGERICH,*)

Justice of the Supreme Court

of the State of (*New York.*)

Dated, (*New York, June 18, 1916.*)

FORM No. 338

Execution Against Income

THE PEOPLE OF THE STATE OF NEW YORK,

To the Sheriff of the County of (*New York,*) Greeting:

WHEREAS, judgment was duly rendered on the (*8th*) day of (*May, 1916,*) in an action in the (*Municipal*) Court of the (*City of New York, Borough of Manhattan, First District,*) between (*Arthur C. Easton,*) plaintiff, and (*William S. Cook,*) defendant, in favor of said (*plaintiff*) and against said (*defendant*) for the sum of (*Two hundred (\$200)*) Dollars, and

WHEREAS, on the (*9th*) day of (*May, 1916,*) said judgment was duly docketed in the office of the Clerk of the County of (*New York*) and

WHEREAS, on the (*15th*) day of (*May, 1916,*) an execution upon said judgment against the property of the said judgment debtor was duly issued out of the (*Supreme*) Court to the (*Sheriff*) of the County of (*New York*) in which said (*judgment debtor then resided and still resides*),

WHEREAS, said execution has been returned by the (*Sheriff*) of the (*County of New York wholly*) unsatisfied and the said judgment remains (*wholly*) unpaid, and the sum of (*\$200*) dollars is now due thereon and

WHEREAS, an order was on the (*18th*) day of (*June, 1916,*) duly made by Hon. (*Leonard A. Giegerich,*) one of the Justices of the (*Supreme*) Court of the State of (*New York,*) directing that an execution issue to the (*Sheriff*) of the County of (*New*

Execution

York,) against the (*wages, earnings and salary*) due and owing from (*Merchants' National Bank of New York*) to the judgment debtor, and the (*wages, earnings, salary*) and income which may hereafter become due and owing from (*Merchants' National Bank of New York*) to said judgment debtor, pursuant to the provisions of section 1391 of the Code of Civil Procedure of the State of New York, and

WHEREAS, there is now actually due upon said judgment the sum of (*Two hundred (\$200)*) Dollars, with interest from the (*8th*) day of (*May, 1916,*)

NOW, THEREFORE, WE COMMAND YOU, that you satisfy said Judgment, with interest thereon from the date of its entry, together with your fees, out of the (*wages, earnings and salary*) of the said Judgment Debtor, due and owing to him, and which shall hereafter become due and owing to him from the said (*Merchants' National Bank of New York*), pursuant to the provisions of Section 1391 of the Code of Civil Procedure, and that this execution and the levy to be made by you hereunder shall become a lien and a continuing levy upon the (*wages, earnings and salary*) due and to become due to the said Judgment Debtor from the said (*Merchants' National Bank*) to an amount which shall not exceed ten per centum of his said (*weekly wages, earnings and salary*) of (*twenty-five (\$25)*) dollars, to wit: in the sum of (*two and 50/100*) (*\$2.50*) dollars per week, and that the said levy shall become a lien and a continuing levy until this execution and the expenses thereof are fully paid and satisfied, and that you return this execution when satisfied to the Clerk of the County of (*New York*) with your certificate thereon showing the manner in which you have executed the same.

WITNESS, Hon. (*Leonard A. Giegerich*) Justice of the (*Supreme*) Court of the State of (*New York*) this (*18th*) day of (*June, 1916.*)

(*LINDSAY & PALMER,*)

Attorneys for Judgment Creditor,
Office and Post Office Address,
(*No. 29 Broadway,*)
(*Borough of Manhattan,*)
(*City of New York.*)

NOTICE OF EXCEPTIONS

FORM No. 339

Notice of Exceptions to Decision (or Report of Referee)

SUPREME COURT,
(*New York*) County.

(<i>FRANCES ELLIOTT HOLT</i>),	}
Plaintiff,	
against	
(<i>ELLEN ABBOT</i> and <i>FRANKLIN ABBOT</i>),	
Defendants.	

Sirs:

PLEASE TAKE NOTICE that the plaintiff herein excepts to the decision and findings (or to the report of *Franklin B. Thomas*, referee,) filed herein in the office of the Clerk of (*the County of New York*,) on the (*25th*) day of (*February*, 1916,) as follows:

First: Said plaintiff excepts to the rulings and findings contained in (*the fourth alleged finding of fact and to every part thereof.*)

Second: Said plaintiff excepts to the rulings and findings contained in (*the sixth alleged finding of fact as follows, to wit:*

That the judgment therein referred to bearing date the 28th day of September, 1912, was "duly made and entered," and also that the covenant therein referred to was inserted in the deed therein referred to "for the purpose of establishing a uniform plan of restriction limiting the use of lots on 72nd street to private dwellings.")

Third: Said plaintiff excepts to so much of the rulings and findings contained in (*the fourth alleged conclusion of law as is set*

To Decision

forth under subdivisions 3 and 4 thereof, and to each and every part of said subdivisions.)

Dated, (*New York, May 29, 1916.*)

(*EVAN O. ANDERSON,*)

Attorney for (*Plaintiff,*)

(*25 Broad Street,*)

(*Manhattan, New York City.*)

To

(*JOHN K. RICHARDSON,*) Esq.,

Attorney for (*Defendant,*)

(*43 Bond Street,*)

(*Troy, New York.*)

To

(*WILLIAM F. SCHNEIDER,*)

Clerk of the County of (*New York.*)

FORM No. 340

Notice of Exceptions To Decision

SUPREME COURT,
(*New York*) County.

(*JOHN DOE,*)

Plaintiff-Respondent,

against

(*RICHARD ROE,*)

Defendant-Appellant.

Sir:

TAKE NOTICE that the (*defendant, Richard Roe,*) excepts to the decision of the court filed in the above-entitled action on the (*30th*) day of (*June, 1916,*) to the findings of fact and conclusions of law made by the court in the proposed decision prepared by the plaintiff; to the refusal of the court to find facts and conclusions of law as requested by defendant in the following particulars:

To Decision

I. To so much of the tenth finding of facts as finds that . . . on the ground that there is no evidence to support same.

II. To the eleventh finding of fact upon the ground that there is no evidence to support same.

III. To the first conclusion of law upon the ground that there is no evidence to support same, and that it is contrary to and against the weight of evidence.

IV. To the seventh conclusion of law upon the ground that there is no evidence in the case upon which to base such a conclusion of law.

V. To the refusal of the court to find as requested in the proposed findings of fact and conclusions of law submitted by the defendant, Richard Roe, as follows:

VI. The refusal to find as requested in paragraph III of the findings of fact submitted by him.

VII. The refusal to find as requested in paragraph IV of the findings of facts submitted by him.

VIII. Said defendant also excepts to the refusal of the court to make the conclusions of law as requested by paragraph I of the conclusions of law submitted by him to the court.

IX. Said defendant further excepts to the conclusions of law contained in the decision and to the decision itself on the grounds that facts have not been found to support said decision and conclusions of law.

Dated, (*July 6, 1916.*)

(*EDWARD SMITH,*)

Attorney for (*Defendant.*)

(*100 Broadway, Manhattan,*)

(*New York City.*)

To

(*WILLIAM F. SCHNEIDER,*)

Clerk of the Supreme Court, (*New York*) County.

(*JAMES ROLLINS,*)

Attorney for (*Plaintiff.*)

Decision of Surrogate

FORM No. 341

Exception to Decision of Surrogate

SURROGATE'S COURT,

(New York) County.

(IN THE MATTER

of the

Estate of JOHN DOE.)

The respondent herein, (*the City of New York*,) hereby excepts to the decision of the Surrogate, filed in the above court on the (12th) day of (*August*, 1916,) and to each and every part of said decision on the ground that the said decision is contrary to the evidence submitted in the proceedings, and that the same is against the weight of evidence, and on the further ground that the said decision is contrary to law.

Dated, New York, (*August 22*, 1916.)

(LAMAR HARDY,)

Corporation Counsel.

To (RALPH LOWNES,)

Attorney for Petitioner.

(DANIEL J. DOWDNEY,)

Clerk of the Surrogate's Court.

NOTICES OF APPEAL

FORM No. 342

Notice of Appeal to Appellate Division — From Judgment, Trial Term

SUPREME COURT,
(*New York*) County.

(<i>HARRISON GRAVES</i>),	}
Plaintiff,	
against	
(<i>NATIONAL SOAP COMPANY</i>),	
Defendant.	

Sirs:

PLEASE TAKE NOTICE that the (*defendant*) in the above-entitled action hereby appeals to the Appellate Division of the Supreme Court, (*First*) Department, from the judgment of the Supreme Court, (*New York*) County, entered in the office of the Clerk of the County of (*New York*), on the (*13th*) day of (*October*, 1916,) in favor of the (*plaintiff*) and against the (*defendant*) for the sum of (*one thousand and eighty-three dollars and seventy-eight cents*) and from each and every part of said judgment, and also from an order entered in said Clerk's office on the (*24th*) day of (*October*, 1916,) denying a motion to set aside the verdict and for a new trial of the said action, and from each and every part of said order.

Dated, New York, (*October 31*, 1916.)

(*ALBERT CHESTER*),

Attorney for (*Defendant*),

(*100 Broadway*,

Borough of Manhattan,
New York City.)

To

(*PAUL STARR*), Esq.,

Attorney for (*Plaintiff*).

(*WILLIAM F. SCHNEIDER*), Esq.,

Clerk of (*New York*) County.

From Judgment — Special Term

FORM No. 343

Notice of Appeal to Appellate Division — From Judgment, Special Term*

SUPREME COURT,
(*New York*) County.

(*EMMA G. WELLS, individually and as Executrix and Trustee under the last Will and Testament of Fred Wells, deceased, Harry B. Wells, and Albert H. Ehrich,*)

Plaintiff,
against

(*EDWARD W. WILLIAMS, individually and as Executor and Trustee under the last Will and Testament of Fred Wells, deceased, The Fred Wells Company, James Thomas, Frank Luding, and Joseph Hirsch,*)

Defendants.

Sirs:

PLEASE TAKE NOTICE, that the (*defendants, Edward W. Williams, individually and as executor and trustee under the last Will and Testament of Fred Wells, deceased, and Frank Luding,*) hereby appeal to the Supreme Court, Appellate Division, (*First*) Department, from the judgment or decree entered herein in the office of the Clerk of the County of (*New York*) on the (*30th*) day of (*December, 1915,*) and from each and every part thereof.

Dated, (*New York, January 12, 1916.*)

Yours, etc.,

(*JOHN DOOLITTLE,*)Attorney for (*Edward W. Williams,*
Individually, etc.,

To 25 William Street, New York City.)

Messrs. (*JAMES & COLE,*)Attorneys for (*Plaintiffs,*)(*32 Liberty Street, New York City.*)(*WILLIAM F. SCHNEIDER,*) Esq.,Clerk of (*New York*) County.

* When a party desires to appeal from a part only of the judgment, he must specify the part appealed from. An appeal brings up for review only such portions of the judgment as are specified in the notice of appeal.

From Judgment Dismissing Complaint

FORM No. 344

Notice of Appeal to Appellate Division — From Judgment
Dismissing ComplaintSUPREME COURT,
(*New York*) County.

(THE BANK OF NEW YORK,)

Plaintiff,

against

(JOHN HOWELL and WALTER
READ,)

Defendants.

Sirs:

PLEASE TAKE NOTICE, that the above-named plaintiff hereby appeals to the Appellate Division of the Supreme Court, (*First*) Department, from the decision herein, dated the (1st) day of (*July*, 1916,) and entered in the office of the clerk of this court on the (30th) day of (*October*, 1916,) and from the judgment entered herein on the (30th) day of (*October*, 1916,) in the office of the Clerk of the County of (*New York*,) dismissing the complaint of the plaintiff herein and for (*two hundred and sixty and 96/100* (\$260.96)) dollars costs, and from the whole and each and every part of said decision and judgment.

Dated, (*New York*, November 28, 1916.)

Yours, etc.,

(STEIN & RUSHTON,)

Attorneys for Plaintiff,

(40 Wall Street,)

(New York City.)

To

Messrs. (BOSWORTH, MERRALL & YATES,)

Attorneys for Defendants.

(WILLIAM F. SCHNEIDER,) Esq.,

Clerk of the County of (*New York*.)

From Order

FORM No. 345

Notice of Appeal to Appellate Division — From Order

SUPREME COURT,
(*New York*) County.

(*RICHARD WILSON and ANNA
WILSON,*)

Plaintiffs,

against

(*RANDOLPH PERRY, KARL
HATCH, THE NEW COAL
COMPANY and FREDERICK
CARR.*)

Defendants.

Sirs:

YOU WILL PLEASE TAKE NOTICE, that the (*plaintiffs*) above named hereby appeal to the Appellate Division of the Supreme Court, (*First*) Department, from the order made and entered in the above-entitled action and filed in the office of the Clerk of the County of (*New York*) on the (*9th*) day of (*February*, 1915,) (*vacating the attachment herein issued*) and this appeal is taken from such each and every part of said order.

Dated, (*March 3*, 1915.)

Yours, etc.,

(*JAMES & WEEKS,*)

Attorneys for (*Plaintiffs,*)

(*32 Liberty Street,*)

(*New York City.*)

To

(*DAVIS PIERCE,*)

(*Attorney for Defendants Randolph Perry, Karl Hatch,
The New Coal Company, and Frederick Carr.*)

(*WILLIAM F. SCHNEIDER,*) Esq.,

The Clerk of the County of (*New York.*)

From Part of Order

FORM No. 346

Notice of Appeal to Appellate Division — From Part of Order

SUPREME COURT,
(*New York*) County.(EDWARD LEE and FRANK
LAWRENCE,)

Plaintiffs,

against

(THE AMERICAN HAT COM-
PANY,)Defendants.

Sirs:

PLEASE TAKE NOTICE, that the (*plaintiffs*) in the above-entitled action hereby appeal to the Appellate Division of the Supreme Court, (*First*) Department, from that part of the order made in the above-entitled action and entered in the office of the Clerk of the County of (*New York*), on the (*28th*) day of (*February*, 1916,) which (*vacates so much of the order made herein by Hon. Charles L. Guy, one of the Justices of this Court, on the 1st day of February, 1916, as required the defendant The American Hat Company, and its President, to be examined before trial, and the deposition of said Henry Jones to be taken and the books and papers of said American Hat Company, specified in said order, to be produced at such examination.*)

Dated, (*March 5, 1916.*)

Yours, etc.,

(NATHAN BUDD,)

Attorney for (*Defendants*)-Respondents.

(1 Wall Street,)

(*Borough of Manhattan,*)(*New York City.*)

To

(AUSTIN BLOCK,) Esq.,

Attorney for (*Plaintiffs*)-Appellants,

(WILLIAM F. SCHNEIDER,) Esq.,

The Clerk of the County of (*New York*.)

From Order Denying Motion Under 547 C. C. P.

FORM No. 347**Notice of Appeal from Order Under Section 547, Code (Before Entry
of Final Judgment)**

SUPREME COURT,
(*New York*) County.

(<i>ADAM ROSE,</i>)	} Plaintiff,
against	
(<i>WILLIAM POST,</i>)	
Defendant.	

Sir:

TAKE NOTICE that the (*defendant*) in the above-entitled action hereby appeals to the Appellate Division of the Supreme Court, (*First*) Judicial Department, from the order of this Court entered herein bearing date the (*8th*) day of (*November, 1915,*) (*resettling the order of said Court bearing date the 27th day of October, 1915, denying the motion of said defendant for judgment upon the pleadings dismissing the amended complaint in said action;*) and from each and every part of said order.

Dated, (*New York, November 10, 1915.*)

(*DUNN & ROSE,*)

(*41 Park Row,*)

(*Borough of Manhattan,*)

(*New York City.*)

To

(*JACOB C. BOLEN,*) Esq.,
Attorney for Plaintiff.

(*WILLIAM F. SCHNEIDER,*) Esq.,
Clerk of the County of (*New York*).

From Order and Judgment Under 547 C. C. P.

FORM No. 348

Notice of Appeal from Order and Judgment Under Section 547, Code
SUPREME COURT,
(*New York*) County.

(*ADAM ROSE*,)

Plaintiff,

against

(*WILLIAM POST*,)

Defendant.

Sir:

PLEASE TAKE NOTICE that the above-named plaintiff, (*Adam Rose*,) hereby appeals to the Appellate Division of the Supreme Court, (*First*) Department, from the order made and entered herein in the office of the Clerk of the County of (*New York*) on the (*10th*) day of (*September*, 1916), granting (*defendant's*) motion for judgment upon the pleadings, and from the judgment made upon said order and entered herein in the office of the Clerk of the County of (*New York*), on the (*10th*) day of (*September*, 1916), directing judgment for the (*defendant*) (*William Post*) herein, upon the pleadings herein, against the (*plaintiff*,) with (\$28.28) costs, and from each and every part of said order and judgment.

Dated, (*New York, September 15, 1916.*)

Yours etc.,

(*JAMES SMITH*,)

Attorney for (*Plaintiff*,)

(*2 Rector Street*,)

(*Borough of Manhattan*,)

(*City of New York*.)

To

(*FRANK BLOCK*,) Esq.,

Attorney for (*Defendant*).

(*WILLIAM F. SCHNEIDER*) Esq.,

The Clerk of the County of (*New York*):

From Surrogate's Decree

FORM No. 349

Notice of Appeal to Appellate Division—From a Decree of the
Surrogate's CourtSURROGATE'S COURT,
(*New York*) County.

(IN THE MATTER

of

The estate of THOMAS P. CARD,
(*deceased.*)

Sirs:

PLEASE TAKE NOTICE, that the (*Respondent William Watson*) hereby appeals to the Appellate Division of the Supreme Court, (*First*) Department, from the order and decree herein, (*revoking the letters testamentary issued to respondent and removing him as trustee,*) which order and decree was made and entered herein in the office of the Clerk of this Court on the (*9th*) day of (*February, 1916;*) and that said (*respondent*) appeals from the whole and every part thereof.

PLEASE TAKE FURTHER NOTICE, that the (*respondent*) also appeals to the Appellate Division of the Supreme Court, (*First*) Department, from (*the order of injunction made and entered herein in the office of the Clerk of this Court on September 6, 1915,*) and from each and every part of said order.

PLEASE TAKE FURTHER NOTICE, that the (*respondent*) also appeals to the Appellate Division of the Supreme Court, (*First*) Department, from the order (*of reference*) made and entered herein in the office of the Clerk of this Court on (*December 8, 1915,*) and from each and every part of said order.

Dated, (*April 6, 1916.*)

Yours, etc.,

(FRANCIS ACKERMAN,)

Attorney for (*Respondent,*)(*3 Broadway,*)(*Borough of Manhattan,*)

To

Messrs. (RALSTON & RICE,) (*New York City.*)Attorneys for (*Petitioners.*)

(DANIEL J. DOWDNEY,)

Clerk of the Surrogate's Court, (*New York County.*)

From Surrogate's Order

FORM No. 350

Notice of Appeal to Appellate Division — From Surrogate's Order
SURROGATE'S COURT,
(*New York*) County.

In the Matter
of
(*The Probate of a Paper Alleged to
be the last Will and Testament of
DAVID GOLDSTEIN.*)

Sirs:

YOU WILL PLEASE TAKE NOTICE that (*Alexander Brown*) hereby appeals to the Appellate Division of the Supreme Court, (*First*) Department, from the order made and entered in the above-entitled matter by the Hon. (*John P. Cohalan*), Surrogate, and bearing date the (*15th*) day of (*October, 1916*), which order (*substituted Messrs. Park & Jones in the place and stead of Alexander Brown as attorneys for Louis Goldstein and Martin Goldstein*) and this appeal is taken from each and every part of said order.

Dated, (*November 14, 1916.*)

Yours, etc.,

(*JAMES & COLE,*)

Attorneys for (*Appellant,*)

(*32 Liberty Street,*

*Borough of Manhattan,
New York City.*)

To

Messrs. (*PARK & JONES,*)

Attorneys for (*LOUIS and MARTIN GOLDSTEIN,*)

(*52 Broadway, New York City.*)

(*DANIEL J. DOWDNEY,*)

Clerk of the Surrogate's Court,

County of (*New York.*)

From Interlocutory Judgment

FORM No. 351

Notice of Appeal from Interlocutory Judgment

SUPREME COURT,
(*New York*) County.

(<i>ALBERT JAMES,</i>)	} Plaintiff,
against	
(<i>WILLIAM SMITH,</i>)	
Defendant.	

Sir:

YOU WILL PLEASE TAKE NOTICE that the (*defendant William Smith*) hereby appeals to the Appellate Division of the Supreme Court, (*First*) Department, from the interlocutory judgment made and entered in the above-entitled action in the office of the Clerk of the County of (*New York*) on the (*3rd*) day of (*December, 1915, overruling*) the demurrer interposed by (*plaintiffs*) to the (*counterclaim set forth in the answer of the defendant*); and this appeal is taken from each and every part of said judgment.

Dated, (*New York, December 4, 1915.*)

Yours, etc.,

(*FRANK WILSON,*)Attorney for (*Plaintiff,*)

Office and P. O. Address,

(*3 Wall Street,*)(*Borough of Manhattan,*)(*New York City.*)

To

(*JAMES HOLT,*) Esq.,Attorney for (*Defendant,*)(*4 Broadway, New York City.*)(*WILLIAM F. SCHNEIDER,*)Clerk of the County of (*New York.*)

To Appellate Term From N. Y. City Court

FORM No. 352

Notice of Appeal to Supreme Court, Appellate Term — From Judgment of the City Court

CITY COURT OF THE CITY OF NEW YORK.

(JAMES GEIST,)	}
Plaintiff-(<i>Respondent</i> ,)	
against	

(FRANCIS BATES,)	}
Defendant-(<i>Appellant</i> .)	

Sir:

PLEASE TAKE NOTICE, that the (*defendant*) in the above-entitled action hereby appeals to the Appellate Term of the Supreme Court, (*First*) Department, from the judgment entered herein in the office of the Clerk of the City Court of the City of New York on the (10th) day of (*December*, 1915,) in favor of the (*plaintiff*) and against the (*defendant*) for the sum of (*eight hundred and seventy-six* 24/100) dollars (\$876.24), and from the whole of said judgment, and each and every part thereof.

Dated, (*New York, December 22, 1915.*)

(ELMER VANDERBILT,)

Attorney for (*Defendant*,)

O. & P. O. Address,

(32 *Liberty Street*,)(Borough of *Manhattan*,)

(New York City.)

To

(WILLIAM RUSSELL,) Esq.,

Attorney for (*Plaintiff*,)(10 *Wall Street*,)

(New York City.)

(THOMAS F. SMITH.) Esq.,

Clerk of the City Court of the City of New York.

To Stay Execution

FORM No. 353

Undertaking on Appeal from Judgment to Stay Execution*

SUPREME COURT,
(*Dutchess*) County.

(<i>ANDREW FRENCH,</i>) Plaintiff-Respondent, against (<i>THEODORE DAVIS,</i>) Defendant-Appellant.	}
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WHEREAS, on the (15th) day of (*January*, 1915,) in the (*Supreme*) Court of (*the State of New York, Dutchess*) County, the above-named respondent recovered a judgment against the above-named appellant for (*eleven thousand two hundred* (\$11,200)) dollars damages and costs;¹

And the above-named appellant feeling aggrieved thereby intends to appeal therefrom to the (² *Appellate Division of the Supreme Court, Second Department*):

NOW, THEREFORE, we, (*James Conlan,*) residing at (315 West 51st street,) in (*the Borough of Manhattan, City of New York,*) and (*Joseph Murphy,*) residing at (259 West 68th street), in (*the Borough of Manhattan, City of New York,*) do hereby jointly and severally undertake that if the said judgment so appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the sum recovered or directed to be paid by the said judgment or the part thereof as to which it is affirmed; and that the said appellant will pay all costs and damages which may be awarded against him on the appeal, not to exceed the sum of five hundred (\$500) dollars.

Dated, (*June 15th*, 1915.)

Signed and sealed by:

(*JAMES CONLAN,*)
(*JOSEPH MURPHY.*)

* If appeal is to Court of Appeals adapt as follows:

1. "And thereafter on appeal to the Supreme Court Appellate Division (*Second*) Department said judgment was (*affirmed*) with (\$110) costs by an order entered in the office of the clerk of said App. Div. on (*June 5*, 1916)."

2. *Court of Appeals* (§§ 1326, 1327, Code).

Affidavits of Sureties

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*JAMES CONLAN*,) being duly sworn, says, that he is a resident of and a (*householder*) within the State of New York, and is worth the sum of (*twenty thousand*) (\$20,000) dollars over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

(*JAMES CONLAN*.)

Sworn to before me, this }
 (15th) day of (*June*, 1915.) }

(*ROBERT JOHNSON*.)

Notary Public,
 (*New York*) County.

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*JOSEPH MURPHY*,) being duly sworn, says, that he is a resident of and a (*freeholder*) within the State of New York, and is worth the sum of (*twenty thousand*), (\$20,000) dollars over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

(*JOSEPH MURPHY*.)

Sworn to before me, this }
 (15th) day of (*June*, 1915.) }

(*ROBERT JOHNSON*.)

Notary Public,
 (*New York*) County.

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

I certify that on this (15th) day of (*June*, 1915,) before me personally appeared (*James Conlan and Joseph Murphy*,) to me known and known to me to be the individuals described in, and who executed the foregoing undertaking, and they severally duly acknowledged to me that they executed the same.

(*ROBERT JOHNSON*.)

Notary Public,
 (*New York*) County.

FORM No. 354

Undertaking to Perfect Appeal to Court of Appeals *

SUPREME COURT,
(*New York*) County.

(ALFRED AMES,)	}
(<i>Plaintiff</i>) and	
(<i>Appellant</i>)	
against	
(KARL KINNEY,)	}
(<i>Defendant</i>) and	
(<i>Respondent</i>).	

WHEREAS, on the (10th) day of (*January*, 1916,) in the above named Court, at (*Special Term*) thereof, (*a final judgment was made and entered in the office of the Clerk of the County of New York, on that day, decreeing specific performance of the contract set forth in the complaint*) ;

AND thereafter on appeal to the Supreme Court, Appellate Division, (*First*) Department, (*said judgment was reversed by an order entered in the office of the Clerk of the said Appellate Division on the 15th day of May, 1916, and a judgment of reversal was entered thereon in the office of the Clerk of the County of New York on the 20th day of May, 1916.*)

AND the appellant feeling aggrieved thereby (*intends to*) appeal therefrom to (*the Court of Appeals*;))

NOW, THEREFORE, We, (*James Conlan*,) residing at (*315 West 51st Street in the Borough of Manhattan, City of New York*,) and (*James Murphy*, residing at *259 West 58th Street in the said City and Borough*,) do hereby pursuant to the Statute in such case made and provided, jointly and severally undertake, that the appellant will pay all costs and damages which may be awarded against the appellant on said appeal not exceeding the sum of five hundred dollars.

Dated (*New York, June 16, 1916.*)

(*JAMES CONLAN*,)
(*JAMES MURPHY*.)

[Acknowledgments and affidavits as on p. 724.]

* § 1326 C. C. P. This undertaking does not stay execution.

To Perfect Appeal from Surrogate's Court

FORM No. 355

Undertaking on Appeal — To Perfect Appeal from Surrogate's Court

SURROGATE'S COURT,

(Kings) County.

(In the Matter of the Judicial Settlement
of the Accounts of

MARY MIX,

as administratrix of the Estate of
MARTIN MIX

Deceased.)

WHEREAS on the (5th) day of (June, 1916,) a (*decree*) was made and entered in the above entitled proceeding in the office of the Clerk of the Surrogate's Court of the County of (Kings,) *judicially settling the accounts of Mary Mix, as administratrix of the Estate of Martin Mix, deceased*);

AND (*Martha Mix*,) the appellant herein, feeling aggrieved thereby, intends to appeal therefrom to the Supreme Court, Appellate Division, (*Second*) Department;

NOW THEREFORE, We, (*Richard Rand*,) residing at (75 *Remsen Street in the Borough of Brooklyn, City of New York*,) and (*Samuel Sands*,) residing at (*Flushing, Long Island*,) pursuant to the Statute in such case made and provided do hereby jointly and severally undertake to and with the People of the State of New York, that the Appellant (*Martha Mix*) will pay all costs and damages which may be awarded against the Appellant on said appeal not exceeding the sum of two hundred and fifty dollars.

Dated, (*Brooklyn, N. Y. City, July 7, 1916.*)

(RICHARD RAND,)

(SAMUEL SANDS.)

[Acknowledgments and affidavits as on p. 724.]

This bond does not stay execution, but is necessary to render notice of appeal effectual. (§ 2759.)

Notice of Exception

For various forms of undertakings necessary to stay execution of Surrogate's decree or order, see §§ 2760-2762, Code; and see p. 112 *et seq.*

This undertaking must be approved by the Surrogate. (§ 2762, Code.)

FORM No. 356

Notice of Exception to Sureties

[Court and Title of Case]

PLEASE TAKE NOTICE that the (*plaintiff*) excepts to the sufficiency of the (*sureties*) in the (*undertaking on appeal*) herein filed in the office of the Clerk of the County of (*New York*) on the (*2nd*) day of (*January*, 1916,) and further he excepts to the form and sufficiency of the (*undertaking*.)

Dated, (*New York*, February 11, 1916.)

(*RALSTON & RICE*),

(*Plaintiff's*) Attorneys,

(*32 Liberty street,*

New York.)

To

(*FRANCIS ACKERMAN*),

Attorney for (*Defendant*.)

FORM No. 357

Notice of Justification of Sureties

[Court and Title of Case]

PLEASE TAKE NOTICE, that the sureties upon the (*undertaking*) given by the (*appellant on his appeal from the judgment entered in the above-entitled action which was filed in the office of the clerk of the County of New York on the 2d day of January, 1916,*) will justify before one of the justices of this court, sitting at (*Part II*.) Special Term thereof, County Court House,

Notice of Approval

(*Borough of Manhattan, City of New York,*) on the (9th) day of
(*February, 1916,*) at (10:30) o'clock in the forenoon of that day.

Dated, (*New York, February 13, 1916.*)

(*FRANCIS ACKERMAN,*)

Attorney for (*Defendant,*)

(*No. 3 Broadway,*
New York.)

To

(*RALSTON & RICE,*)

Attorneys for (*Plaintiff,*)

FORM No. 358**Notice of Approval of Undertaking Upon Justification of Sureties**

[Court and Title of Case]

PLEASE TAKE NOTICE, that the sureties in the (*undertaking on appeal*) herein, filed herein on (*January 29, 1916,*) to whose sufficiency and to the sufficiency of which (*undertaking*) the (*plaintiff*) excepted, have justified and the said undertaking was this day approved by the Hon. (*John Ford,*) upon said justification before him at Special Term (*Part II*) of this court, and as so approved was this day filed in the office of the Clerk of the County of (*New York.*)

Dated, (*February 19, 1916.*)

(*FRANCIS ACKERMAN,*)

Attorney for (*Defendant,*)

(*No. 3 Broadway,*
New York.)

To

Messrs. (*RALSTON & RICE,*)

Attorneys for (*Plaintiff,*)

 Notice of Argument

FORM No. 359**Notice of Argument**

Supreme Court — Appellate Division,
 (*First*) Department.

(JOHN JONES,) Plaintiff-(<i>Appellant</i>), against (JOHN DOE,) Defendant-(<i>Respondent</i>).	}
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Sir:

PLEASE TAKE NOTICE, that the appeal in the above-entitled action will be brought on for argument before this court, at a term thereof to be held at its Court House, in the (*Borough of Manhattan, City of New York*), on the (*6th*) day of (*June*, 1916), at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated, the (*20th*) day of (*May*, 1916).

Yours, etc.,
 (WILLIAM REILLY,)

 Attorney for (*Plaintiff-Appellant*),

 (*No. 27 Pine Street*),

 (*Borough of Manhattan*),

 (*City of New York*).

To

(JOHN WILLIAMS), Esq.,
 Attorney for (*deft.-respdt.*)

MORTGAGE FORECLOSURE

Outline of Procedure

(No Infants, Incompetents or Absentees)

NEW YORK COUNTY

1. Ascertain whether any dower rights exist.
2. Put in Search for all Conveyances and liens subsequent to date of recording the mortgage.
3. Ascertain names of all tenants, occupants or parties in possession. (See 59 *Hun* 356, 121 *N. Y.* 498.)
4. Ascertain full names and addresses of all necessary or proper parties defendant.
5. Necessary parties defendant.
 - (a) Owner of equity of redemption and wife. (217 *N. Y.* 526.)
 - (b) Mortgagor.
 - (c) Heirs, devisees or legatees of Mortgagor.
 - (d) Wife of Mortgagor. (165 *App. Div.* 348.)
 - (e) Subsequent encumbrances.
 - (f) Remaindermen.
 - (g) *Cestui que trustent*.
 - (h) Persons claiming under title paramount.
 - (i) Sometimes prior lienors. (e. g., 85 *App. Div.* 312), plaintiff, assignee of mortgage, see 157 *App. Div.* 259.)
 - (j) People of the State of New York in cases where transfer tax may be unpaid, etc.
 - (k) Trustee in bankruptcy of owner of equity.
6. Proper parties defendant.
 - (a) Guarantor of mortgage or his representative.
 - (b) Remaindermen.
 - (c) Adverse claimants.
 - (d) Purchasers at tax sale.
 - (e) Persons in possession as tenants or occupants, and John Doe and Jane Roe, representing tenants whose names are unknown. (Sometimes it is deemed wiser to sell subject to good leases. See 93 *Misc.* 510, and cases cited.)
 - (f) Persons claiming under title paramount.

Outline of Procedure

6a. Where The People of the State is made a party defendant, comply with § 1627, Code, as amended 1916, to go in effect September 1, 1916.

7. Draw Summons in usual form, and Complaint, notice of object of action, and *lis pendens*.

8. File Summons and Complaint and file and record *lis pendens*; *lis pendens* must be filed with Complaint or after; (but cannot be filed before) and must be filed at least 20 days before final judgment. (§§ 1631 and 1670, 1672, Code.)

9. Serve Summons and Complaint (or notice of object of action) on all defendants. Service of the summons must be made within 60 days after filing *lis pendens*. (See § 1670, Code.) Remember that personal service may now be made without the State, without an order. (§§ 438 and 443, Code.)

10. Draw and obtain and file affidavit of service of Summons, and Complaint or notice of object of action.

11. After default in appearing or answering, draw affidavit of regularity. This is a good time to correct papers and proceedings. e. g. Showing proper name of party sued by name unknown. Showing party defendant not necessary, etc. Some practitioners file the notices of appearance served upon them at some stage of the action if parties serving them have failed to file them.

12. Draw notice of motion for application for Judgment and Order of Reference to Compute amount due.

13. Serve notice of motion, affidavit of regularity on those who have appeared and have not waived, and obtain admission or affidavit of service.

14. File motion papers with admission or affidavit of service or note of issue outside New York county.

15. Draw Judgment and Order of Reference to Compute and submit same on return day.

16. Prepare referee's Summons for witnesses if needed.

17. Obtain and serve certified copy of Order of Reference to Compute upon referee and arrange date for hearing and have referee sign summons for witnesses.

18. Serve Order of Reference to Compute with notice of entry upon all parties who have appeared and demanded service. Obtain admission or affidavit of service.

19. Serve notice of hearing upon those who have appeared and have not waived; time required five days where attorneys reside, or have their offices in same city or village, otherwise eight days.

Outline of Procedure

20. Obtain admission of service or affidavit of service of notice of hearing.

21. Serve referee's Summons and obtain affidavit of service.

22. Prepare report of referee.

23. Attend hearing before referee to compute.

Have ready:

(a) Referee's oath.

(b) Referee's report ready for signature.

(c) Bond.

(d) Mortgage.

(e) Assignments of Mortgage.

(f) Receipted bills for taxes, assessments, water rates, penalties or interest, if any paid by Mortgagee.

(g) Receipt for payment of interest on any prior mortgage or premium of insurance, if any paid by Mortgagee.

(h) Agreements of extension, if any.

(i) Summons with affidavit of service.

(j) Itemized computation of amounts for convenience of referee.

(k) Check for \$10 to order of referee.

Have referee take oath before doing any other act. See that exhibits are properly marked by referee.

24. Obtain signed report and pay referee.

25. File report.

26. Serve notice of filing of report upon those who have appeared, and not waived.

27. Draw affidavit of regularity.

28. After eight days after service of notice of filing of report obtain certificate of county clerk that no exceptions have been filed. Serve affidavit of regularity and notice of application for Judgment of Foreclosure and Sale upon those who have appeared and have not waived and obtain admission or affidavit of service. This is not necessary, but frequently done. (168 *App. Div.* 500.)

29. File motion papers with admission or affidavit of service or note of issue outside New York County.

30. Draw Judgment of Foreclosure and Sale, directing Referee to Sell.

31. Attend on return day and submit Proposed Judgment of Foreclosure and Sale with notice and proof of service.

32. Obtain Judgment of Foreclosure and Sale and Order to Referee to Sell.

Outline of Procedure

33. Prepare and file Judgment Roll.

34. Obtain certified copy of Judgment and Order of Referee to Sell.

35. Serve certified copy of Judgment upon referee to sell (or upon sheriff if designated.) Arrange for date of sale, name of auctioneer and for publication of notice of sale.

36. Serve Final Judgment with notice of entry upon all parties who have appeared and demanded service.

Obtain admission or affidavit of service.

37. Prepare notice of publication of sale including amount of prior liens, amount due, restriction, and diagram of property and have same signed by referee. (See Rule 15, Special Term Rules, § 1678, Code.)

38. Notify auctioneer.

39. Give notice to newspapers or advertising agency with instructions for publication twice a week for three successive weeks preceding sale and on day preceding sale, but see § 1678, Code, as to various localities.

40. Obtain and serve printed notice of sale on all parties entitled. Those interposing common form of appearance are entitled to notice of sale. Obtain admission or affidavit of service.

41. Arrange for additional advertisement of sale if desired, also arrange for protection of property and agree on amount to be bid by plaintiff.

42. Draw and obtain signature of referee to terms of sale.

43. Day before sale remind referee of time and place of sale and have computed exact amount of taxes and other liens property is to be sold subject to.

44. Attend sale.

Obtain copy of memorandum of purchase signed by purchaser.

Referee requires 10 per cent. of purchase price in cash or certified check, unless plaintiff purchases, in which case 10 per cent. may be waived by plaintiff's attorney. Purchaser pays auctioneer's fees of \$17.

Obtain this receipt for referee.

Obtain receipt for advertising.

If plaintiff purchases, give referee indorsement on memorandum of purchase.

"Ten per cent. on account is hereby waived."

Attorneys for Plaintiff."

Outline of Procedure

45. Arrange with referee for date and time of closing and prepare and produce thereat.

46. Obtain proof of publication of notice of sale.

- (a) Referee's Deed.
- (b) Referee's Report of Sale.
- (c) Receipts for Allowance in Judgments and Report.
Taxes, assessments, water rates, interest or penalty,
payments of interest on prior mortgages, premiums
on insurance, etc.
- (d) Receipt for advertising expenses.
- (e) Receipt for costs and disbursements of attorneys.
- (f) Receipt for extra allowances of attorneys.
- (g) Receipts for other payments or allowances contained in
Judgment and Report.
- (h) Recording fees.
- (i) Check for \$50 for Referee.
- (j) Statement showing computation of interest amounts to
time of closing in detail for convenience of referee.
- (k) Affidavit of publication of notice of sale.
- (l) Terms of sale.
- (m) Certified check or cash for balance, or if property
purchased by plaintiff, receipt of plaintiff or his
attorneys for same.

47. Attend closing.

- (a) Obtain signature of referee to deed and acknowledgment.
- (b) Obtain signature of referee to Report of Sale and
verification.
- (c) Pay referee.
- (d) Obtain other payment receipts, if any.

48. File report of sale (within 30 days, § 1633, Code) and enter judgment for deficiency; if any surplus, Referee pay same to City Chamberlain or County Treasurer, within 5 days. (Rule 61, G. R. P.)

49. Serve notice of filing to those who have appeared and demanded service.

50. Obtain admission of service or affidavit of service of such notice of filing.

Draw order confirming sale.

51. When eight days after service of notice of filing have

Notice of Object of Action

elapsed, apply for an order confirming sale, giving notice to those who have appeared and not waived such notice; produce upon application certificate of county clerk, showing that no objections have been filed.

FORM No. 360

Notice of Object of Action With Notice of No Personal Claim

SUPREME COURT,
(*New York*) County.

(*JOHN JONES*,)

against

(*JOHN DOE*,) (*RICHARD ROE*)
and (*THOMAS WILLIAMS*,)
Defendants.

To the above-named defendant, (*THOMAS WILLIAMS*):

Pursuant to section 423 of the Code of Civil Procedure, TAKE NOTICE, that the object of this action, in which a summons is herewith served upon you, is to foreclose a mortgage executed by (*John Doe*) to (*John Jones*), dated the (1st) day of (*July*, 1913,), and recorded in the office of the (*Register*) of the County of (*New York*,) on the (2d) day of (*July*, 1913,) in Liber No. (52), of (*Mortgages*), Section (12), at page (450), (and was indexed under block number 3256 on the land map of the City of *New York*) to secure the payment of the sum of (*one thousand* (1,000)) dollars, with interest thereon from the (1st) day of (*July*, 1913.)

That there is now due and owing to this plaintiff on said bond and mortgage the sum of (*one thousand* (1,000)) dollars, with interest thereon from the (1st) day of (*July*, 1914); that the following is a description of the mortgaged premises (*here insert description of premises as contained in the complaint*);

 Notice of Pendency of Action

That no personal claim is made against you or any defendant, except the defendant (*John Doe*).

Dated, the (12th) day of (*July*, 1916).

(*ROBERT JENSEN*),

Plaintiff's Attorney,

(*No. 11 Wall Street*),

(*Borough of Manhattan*),

(*City of New York*).

FORM No. 361

Notice of Pendency of Action—Foreclosure

SUPREME COURT,

(*New York*) County.

(*JOHN JONES*),

Plaintiff,

against

(*JAMES THOMPSON*) and (*RICH-
ARD ROE*),

Defendants.

NOTICE IS HEREBY GIVEN, that an action has been commenced and is pending in this court upon a complaint of the above-named plaintiff against the above-named defendants for the foreclosure of a certain mortgage bearing date the (8th) day of (*January*, 1914), executed by (*James Thompson*) of the (*City, County and State of New York*), to (*William Allen*) of the (*City of Newburgh, Orange*) County, State of (*New York*) to secure the payment of the sum of (*five thousand (\$5,000)*) dollars on the (8th) day of (*January*, 1915), with interest at the rate of (*five*) per cent per annum, which mortgage was recorded in the office of the (*Register of the City and County of New York*) on the (9th) day of (*January*, 1914), at (11:30) o'clock in the (*fore*)noon, in Liber (178), Section (12), at page (470), and was indexed under Block No. (1441) on the land map of the (*City of New York*), and has been duly assigned to the above-named plaintiff.

Notice of Appearance and Waiver

That the premises affected by the said action were, at the time of the commencement thereof, and at the time of the filing of this notice, situated in the (*12th Ward of the Borough of Manhattan, City and County of New York*), in the State of New York, and are described as follows, to wit: *Beginning at a point on the * * * to the point or place of beginning* be the said several distances and dimensions, more or less, together with the building and appurtenances thereon.

Dated, (*New York, May 2, 1916.*)

(*WILLIAM RAY,*)

Plaintiff's Attorney,

Office and P. O. Address,

(*52 William Street,*)

(*Borough of Manhattan,*)

(*City of New York.*)

The clerk of the county of (*New York*) is directed to index this notice to the names of the defendants.

(*WILLIAM RAY,*)

Plaintiff's Attorney.

FORM No. 362**Notice of Appearance and Waiver (Foreclosure)**

SUPREME COURT,
(*New York*) County.

(*JOHN DOE,*)

Plaintiff,

against

(*RICHARD ROE,*)

Defendant.

Sir:

PLEASE TAKE NOTICE, that the defendant (*Richard Roe*) appears herein; that I am retained as attorney for him herein, and hereby waive service of all papers and of notices of

Complaint — Short Form

all proceedings herein, except notice of sale and of proceedings to obtain surplus moneys.

Dated, (*August 31, 1914.*)

(*THEODORE CEASAR,*)

Defendant's Attorney,
Office and P. O. Address,
(*No. 15 William Street,*
Borough of Manhattan,
City of New York.)

To

(*WILLIAM REILLY,*) Esq.,
Attorney for Plaintiff,
Office and P. O. Address,
(*No. 13 Wall Street,*
Borough of Manhattan,
City of New York.)

FORM No. 363

Complaint for Foreclosure of a Mortgage — Short Form

SUPREME COURT,
(*New York*) County.

(<i>JOHN BROWN,</i>)	} Plaintiff,
against	
(<i>JOHN JONES,</i>) (<i>EDWARD JEN-</i> <i>KINS</i>) and (<i>JAMES THOMAS,</i>)	
Defendants.	

The plaintiff by (*Forest Bryce*), his attorney, complains of the defendants above named and alleges upon information and belief as follows:

First: That on or about the (*16th*) day of (*October, 1911,*) the defendant (*John Jones,*) for the purpose of securing to the plaintiff (*John Brown*) the payment of the sum of (*Fifteen thousand (\$15,000)*) dollars, with interest thereon, executed,

Complaint — Short Form

duly acknowledged and delivered to the said (*John Brown*) his bond bearing date on said day, sealed with his seal, whereby for the payment of said sum well and truly to be made, as hereinafter stated, he bound himself, his heirs, executors, administrators or assigns, upon condition that the same should be void if the said (*John Jones*), his heirs, executors, administrators or assigns, should pay to the said (*John Brown*), his heirs, executors, administrators or assigns, the said sum of (*Fifteen thousand (\$15,000)*) dollars on the (*16th*) day of (*October, 1914*), and interest thereon to be computed from the (*16th*) day of (*October, 1911*) at and after the rate of six per centum per annum, to be paid semi-annually on the (*18th*) day of (*April and October*) in every year until the said principal sum should be wholly paid, then the above obligation to be void, otherwise to remain in full force and virtue.

Second: That as collateral security for the payment of said indebtedness, the said (*John Jones*) on the same day executed, duly acknowledged and delivered to the said (*John Brown*) a mortgage bearing date on the said (*16th*) day of (*October, 1911*), whereby he granted, bargained and sold to the said (*John Brown*) his heirs, executors, administrators and assigns, the premises which in said mortgage are bounded and described as follows:

(*Description*)

Third: That the said mortgage contained a proviso in substance the same as the condition of the said bond and conferred power and authority in case of default in the payment of the said sum of money or any part thereof, or of the interest thereon, upon the said (*John Brown*) or his heirs, executors, administrators or assigns, to sell the said mortgaged premises according to law.

Fourth: That the said mortgage was duly recorded in the office of the (*Register*) of the County of (*New York*) on the (*17th*) day of (*October, 1911*) in (*Block Series (Mortgages)*) Section (*12,*) Liber (*55*) at page (*452*), and indexed under (*Block No. 3256*) on the Land Map of the (*City of New York*); that being the county within which the said premises were then situated in the County of (*New York*), City and State of (*New York*), and at said time and place said plaintiff duly paid to the

Complaint — Short Form

Register of the County of (*New York*) the recording tax on said mortgage, amounting to (*Seventy-five*) (75) dollars.

Fifth: That the defendant has failed to comply with the conditions of the said bond and mortgage by omitting to pay said sum of (*Fifteen thousand* (\$15,000)) dollars, the principal sum secured by said bond and mortgage, which became due and payable on the (16th) day of (*October*, 1914) and there is now justly due and owing plaintiff on said bond and mortgage the said sum of (*Fifteen thousand* (\$15,000)) dollars with interest thereon at the rate of six per centum per annum from the said (16th) day of (*October*, 1914).

Sixth: That no other action or proceeding has been commenced or maintained at law or otherwise for the recovery of said sum to secure by the said bond and mortgage or any part thereof.

Seventh: That plaintiff is informed and believes, and therefore alleges, that each of the above-named defendants has or claims to have some interest in or lien upon the said mortgaged premises or some part thereof, which interest or lien, if any, has accrued subsequent to and is subordinate to the lien of the said mortgage.*

WHEREFORE, the plaintiff demands that the defendants and all persons claiming under (*them*) subsequent to the filing of a notice of the pendency of this action, in the office of the clerk of the county in which the said mortgaged premises are situated, may be barred and foreclosed of all right, title, interest, claim, lien and equity of redemption in the said mortgaged premises; that the said premises may be decreed, to be sold according to law; that the moneys arising from the sale may be brought into court;

* The People of the State of New York are made a party to this action because the plaintiff does not know whether there may or may not be a transfer tax upon the estate of Richard Roe. The place of residence of the said decedent, Richard Roe, at the time of his death, was Port Chester in the county of Westchester and State of New York. The heirs at law and next of kin of said decedent, Richard Roe, are the defendants (*name them*), who are also the sole legatees and devisees under his last will and testament. That said Richard Roe died testate as aforesaid on or about the 4th day of May, 1915, and letters testamentary under the will of said decedent, were thereafter and on or about the 14th day of May, 1915, duly issued by the Surrogate's Court of the County of Westchester, by which Court said will was admitted to probate to the said and, executors in said will named. The Plaintiff has no knowledge as to whether or not the estate of the said Richard Roe has been administered except as aforesaid. The People of the State of New York are made a party to this action for no other reason than that hereinabove stated.

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that the plaintiff may be paid the amount due upon the said bond and mortgage, with interest to the time of such payment, the expenses of the sale, and the costs and disbursements of this action, so far as the amount of such moneys properly applicable thereto will pay the same; and that the defendant (*John Jones*) may be adjudged to pay any deficiency which may remain, after applying all of said moneys so applicable thereto; and that the plaintiff may have such other or further relief in the premises as shall be just and equitable.

(*FOREST BRYCE*.)

Plaintiff's Attorney,
Office & P. O. Address,
(35 Nassau Street,
(Borough of Manhattan,
(City of New York.)
(Verification)

FORM No. 364

Complaint — Long Form

SUPREME COURT,
(*New York*) County.

(*COMMERCE BANK OF NEW
YORK*.)

Plaintiff,

against

(*JOHN W. McKEE*.) and others,
Defendants.

The above-named plaintiff, by (*White & Curtin*.) its attorneys, respectfully shows to this court and alleges:

First: That at all the times hereinafter mentioned it was and now is (*a domestic corporation created by and existing under the laws of the State of New York*.)

Second: Upon information and belief that the defendant *John*

Complaint — Long Form

W. McKee, for the purpose of securing the payment to the plaintiff, *its successors, legal representatives* and assigns of the sum of *eighteen thousand* (\$18,000) dollars, lawful money of the United States, with interest thereon, did, on or about the *27th* day of *August*, 1913, execute and deliver to the plaintiff a bond bearing date on that day, and sealed with his seal, whereby he bound himself, his heirs, executors and administrators in the sum of *eighteen thousand* (\$18,000) dollars, lawful money as aforesaid, upon the condition that the same should be void if the said obligor, his heirs, executors or administrators should well and truly pay, or cause to be paid, unto the said plaintiff, its successors, legal representatives or assigns, the just and full sum of *eighteen thousand* (\$18,000) dollars, on the *first* day of *January*, 1916, and also interest thereon to be computed from the *first* day of *October*, 1913, at the rate of *six* per centum per annum, payable *semi-annually* on the *30th* day of every *June* and *December* from and after the date thereof until the aforesaid principal sum has been paid in full and satisfied.

Third: That the bond contained an express agreement that in case any default should be made in the payment of the said interest or in any part thereof on any date whereon the same is made payable, as above expressed, and should remain unpaid and in arrears for the space of *thirty* days or in case any tax or assessment upon the premises described in the mortgage executed to secure said obligation and delivered therewith as hereinafter set forth should remain unpaid and in arrears for the space of *ninety* days after the same should become due and payable, then the entire principal sum secured by said bond should forthwith without notice or demand be and become due and payable, if the said plaintiff, *its successors*, legal representatives or assigns should elect to receive same, together with the interest that shall accrue thereon, even though the time thereon limited for the payment thereof should not then have expired, anything in said bond to the contrary thereof in anywise notwithstanding.

Fourth: That as collateral security for the payment of the said indebtedness said defendant *John W. McKee* and his wife, *Katharine D. McKee*, did, on or about the *27th* day of *August*, 1913, duly execute and deliver to the plaintiff a mortgage wherein and whereby they granted, bargained, sold and conveyed unto the

Complaint — Long Form

said plaintiff, *its successors*, legal representatives and assigns forever the following described premises, together with all and singular the tenements, hereditaments thereto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and also all the estate, right, title, interest, possession, claim and demand whatsoever as well in law as in equity of the said mortgagors by, in and to the same and every part and parcel thereof with the appurtenances, together with the right to take or receive such rents or profits as thereafter mentioned, that is to say:

(Description)

That said mortgage was duly acknowledged by said *John W. McKee* and proved as to said *Katharine D. McKee* on the 5th day of *October*, 1913, and duly recorded in the office of the (*Register*) of the County of (*New York*) on the (6th) day of (*October*, 1913), at (*one o'clock, 20 minutes P. M.*), in Block Series Mortgages, Section (12), Liber (55), at page (452) (*and indexed under block number 3256 on the Land Map of the City of New York*) that being the County within which the said premises were then situated.

Fifth: That the said mortgage contained the further covenant and agreement that in case of any such default in payment as aforesaid, that then and from thenceforth it should be lawful for the said plaintiff, *its successors*, legal representatives or assigns, and it or they were thereby authorized and empowered to grant, bargain, sell and dispose of all and singular the premises thereby granted or any and every part thereof at public auction in the manner prescribed by law and to make, seal, execute and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple, absolute; and out of the money arising from such sale, to retain the amount of principal and interest which should then be due and owing on the said bond according to the condition thereof, together with all the costs and charges of advertisement and sale of the said premises and any amount or amounts paid for insurance, taxes, assessments, water rents, or charges as therein mentioned and interest thereon, rendering the overplus of the purchase money (if any there should be) unto the said mortgagors, their heirs or assigns on demand, which sale so to be made should forever be a

Complaint — Long Form

perpetual bar both in law and equity against the said mortgagors, their heirs and assigns and all other persons claiming or to claim the said premises or any part thereof by, from, or under them or any or either of them.

Sixth: That the said mortgage contained the further mutual covenant and agreement that the said mortgagors, their heirs or assigns, should, during all the time until the said principal and interest money secured by said mortgage should be fully paid and satisfied, cause the building or buildings now erected or which might thereafter be erected on the therein described premises, to be and should keep the same insured in such amount as the said plaintiff, its successors, legal representatives or assigns might demand against loss or damage by fire, in and by some solvent incorporated insurance company or companies of good standing, to be designated and approved by the said plaintiff, *its successors*, legal representatives or assigns; and should assign the policy or policies of such insurance to the said plaintiff, *its successors*, legal representatives or assigns as a further and collateral security for the payment of the said money; and in case the said mortgagors, their heirs or assigns should omit to keep said building or buildings so insured and cause the policy or policies of insurance to be assigned as aforesaid, that then and in that case it should and might be optional for the said plaintiff, its successors, legal representatives or assigns to insure the same for the purposes aforesaid against loss by fire in its or their own name or otherwise and keep the same insured in such incorporate insurance company or companies and for such amount as it or they may see fit; and any premiums paid by the said plaintiff, its successors, legal representatives or assigns for such insurance, together with interest thereon should be a lien on the above-described premises and be secured by the said bond and the said mortgage; and on any such default by the said mortgagors, their heirs or assigns in making or renewing any such insurance, the whole principal sum and interest money aforesaid, if not already due and payable, and any amount so paid for insurance at the time of or after such default, any interest thereon, should thereupon and thereafter, at the election of the said plaintiff, its successors, legal representatives or assigns become and be due and payable without any further or other notice.

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Seventh: That the said mortgage contained the further agreement that should the said plaintiff, its successors, legal representatives or assigns by reason of any such policy of insurance as aforesaid, receive any sum or sums of money for damages by fire to the said building or buildings, such amount might be retained and applied by it or them toward payment of the amount thereby secured or, at the option of the said plaintiff, its successors, legal representatives or assigns the same might be paid over either wholly or in part to them the said mortgagors, their heirs or assigns to enable them to repair said buildings or to erect new buildings in their place or for any other purpose or object, satisfactory to the said plaintiff, its successors, legal representatives, or assigns without affecting the lien of the said mortgage for the full amount secured thereby before such damage by fire or such payment took place.

Eighth: And the said mortgagors, for themselves, their heirs and assigns did further covenant and agree until full payment of the amount secured in said mortgage, to bear, pay and discharge as soon as the same might become due and payable all taxes, water rents, charges and assessments which might be imposed by law upon the said mortgaged premises or any part thereof and in default thereof after the expiration of *ninety* (90) days after the same should have become due and payable that it should then be lawful for the said plaintiff, its successors, legal representatives or assigns to pay the amount of any such tax, water rents, charge or assessment with any expenses attending the same; and any amount so paid the said mortgagors for themselves, their heirs and assigns did further covenant and agree to pay to said plaintiff, its successors, legal representatives or assigns with interest thereon, and that the same should be a lien on the said premises and be secured by the said bond and mortgage; and that the whole amount thereby secured, if not then due, should, if the plaintiff, its successors, legal representatives or assigns so elect, become and be due and payable forthwith.

All of which covenants, clauses and agreement will more fully appear by reference to said bond and mortgage in possession of the plaintiff, to which for greater certainty we beg leave to refer.

Ninth: That the defendants and each of them have failed to comply with the condition of said bond and mortgage by omitting to pay the principal sum secured thereby amounting to (*eighteen*

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thousand (\$18,000)) dollars, which by the terms and conditions of said bond and mortgage became due and payable on (January first, 1916, excepting only the sum of three thousand (\$3,000) dollars on account of said principal sum paid on or about July 25, 1914.) That there is now justly due and owing to the plaintiff upon the said bond and mortgage the sum of fifteen thousand dollars (\$15,000), with interest thereon to be computed from December 30, 1915, at the rate of six per centum per annum.

Tenth: That the plaintiff is still the lawful owner and holder of said bond and mortgage.

Eleventh. That the defendants (*Frederick Charles Dickinson* and *Arthur Henry Dickinson*) are infants over the age of fourteen years and reside with their mother and testamentary guardian, the defendant, (*Katharine D. McKee*;) that all the other defendants are natural persons and of full age.

Twelfth: That no proceedings have been had at law or otherwise, and that no action has been brought, commenced or maintained to the knowledge or belief of the plaintiff for the recovery of the said sum secured by the said bond and mortgage or for the recovery of said mortgage debt or any part thereof.

Thirteenth: That the defendants and each of them have or claim to have some interest in or lien upon the said mortgaged premises or some part thereof, which interest or lien, if any, has accrued subsequently to the lien of the mortgage to foreclose which this action is brought.

WHEREFORE, the plaintiff demands judgment that the defendants and each of them and all persons claiming under them or either or any of them subsequent to the commencement of this action, and every person whose conveyance is subsequent or subsequently recorded, may be barred and foreclosed of all right, title, claim, lien and equity of redemption in the said mortgaged premises; that the said mortgaged premises or so much thereof as may be sufficient to raise the amount due to the plaintiff for all sums paid for insurance, taxes and assessments, and also for principal, interest and costs, and which may be sold in parcels without material injury to the parties, may be decreed to be sold according to law, and out of all the moneys arising from the sale thereof, the plaintiff may be paid the amount due on said bond and mortgage, with interest to the time of such payment, and costs and expenses of this action so far as the amount of such moneys properly applicable thereto will pay the same; that the officer making such sale

Complaint — Long Form

be directed to pay from the proceeds thereof all taxes, assessments and water rates, which are liens on the property sold; that a receiver of the said mortgaged premises be forthwith appointed for the benefit of the plaintiff with all the powers of receivers in such actions; that the defendant, *John W. McKee*, may be adjudged to pay any deficiency which may remain after applying all of said moneys so applicable thereto; and that the plaintiff may have such other and further relief or both in the premises as shall be just and equitable.

(*WHITE & CURTIN*,)

Attorneys for Plaintiff,
Office and Post Office Address,
(*No. 140 Broadway,*
Borough of Manhattan,
New York City.)

(Verification)

Reference to Compute

In preparing a motion for the referee to compute the amount due, the attorney should be careful to ascertain whether the property is to be sold in one parcel or not. If there is any reason why the property should be particularly sold either in one parcel or in separate parcels, mention of that fact should be made in his affidavit upon application for an order of reference, and that the order of reference contain, after the usual clauses in reference to computing the amount due, the following: "That the referee report as to whether the premises can or should be sold in one parcel (or otherwise as the particular case may require)." (Rule 60 G. R. P.)

FORM No. 365

Notice of Motion for Appointment of Referee to Compute

SUPREME COURT,
(*New York*) County.

(*COMMERCE BANK*),
Plaintiff,
against

(*JOHN WARE*) and others,
Defendants.

Sirs:

PLEASE TAKE NOTICE, that on the (*third*) day of (*October*, 1916) at the opening of court, or as soon thereafter as counsel can be heard, the undersigned will apply to this court at a Special Term, (*Part I*) thereof, to be held at the County Court House, in (*the Borough of Manhattan, City of New York*), for the relief demanded in the complaint and for an order referring it to some suitable person as referee to ascertain and compute the amount due the plaintiff upon the bond and mortgage to foreclose which

Notice of Motion

this action is brought* preparatory to the application for judgment of foreclosure and sale.

And for an order amending the summons, complaint, notice of pendency of action and all other papers heretofore served or filed herein by striking from each of said papers the names of (*John Doe*) and (*Richard Roe*) parties defendant

And striking out the name (*Phoebe Snow*) and inserting therein the true name (" *Mabel M. Moss.*").

Dated, (*September 25, 1916.*)

Yours, etc.,

(*WHITE & CURTIN,*)

Attorneys for Plaintiff,

(*120 Broadway,*)

(*New York City.*)

To

(*WILLIAM KIMBALL,*) Esq.,

Attorney for Defendants,

(*66 BROADWAY,*)

(*New York City.*)

*In case of infants or absent defendant, insert (and to take proof of the facts and circumstances stated in the complaint and to examine the plaintiff or its agent on oath as to any payments which may have been made, and to compute the amount due on said mortgage.)

Affidavit of Regularity

FORM No. 366

Affidavit of Regularity—On Motion for Appointment of Referee
to ComputeSUPREME COURT,
(*Bronx*) County.

(*London Trust Company*) and (*Mary
Dix*,) as Executors of and Trustees
under the last Will and Testament of
(*Alice Wing*,) deceased,

Plaintiffs,

against

(*John Gale*,) et al.,
Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:(*HAROLD HOWE*,) being duly sworn, says:

1. That he is an attorney and counsellor-at-law employed in the office of (*Done & Done*), the attorneys for the plaintiffs in the above-entitled action, and is familiar with the proceedings therein and has had charge thereof.

2. That this action is brought for the foreclosure of a mortgage upon certain premises described therein now situated in the County of (*Bronx*), State of New York. That said mortgage was executed by the defendant (*Grace Jones*) to (*The Globe Mortgage Company*,) and bears date the (16th) day of (*October*, 1911), and was recorded in the office of the (*Register*) of the County of (*New York*) on the (17th) day of (*October*, 1911), in Liber (55) of Mortgages, (*Section 12*), at page (452) (*and was indexed under block number 3256 on the Land Map of the City of New York*,) that being the County within which the said premises were then situated, (*the said premises being now situated in the County of Bronx, City and State of New York*.)

3. That the said mortgage was subsequently assigned to the now deceased (*Alice Wing*), and the plaintiffs herein as sole executors of and trustees under the last Will and Testament of

Affidavit of Regularity

the said deceased (*Alice Wing*), are now the lawful owners and holders thereof.

4. That as appears from the complaint herein, there is now justly due and owing to the plaintiffs upon the said bond and mortgage the principal sum of (*Fifteen thousand dollars* (\$15,000)) with interest thereon at the rate of (*six*) per centum per annum from the (*16th*) day of (*October, 1914.*)

5. Deponent further says that more than twenty days have elapsed since the due service of the summons and complaint herein on all the defendants, as aforesaid except the said (*John W. Minor*) as appears by the affidavit of service and admission of service thereof and notices of appearance hereto annexed.*

6. That all the defendants named in the summons have appeared except the said (*John W. Minor,*) and all said defendants have waived the service of all papers herein except notice of sale and proceedings to obtain surplus moneys as appears by their notices of appearance hereto attached. That the People of the State of New York appeared hereby by Hon. (*Egburt E. Woodbury,*) Attorney-General, and waived service of all papers except amended complaint, application for judgment, notice of sale, referee's report of sale and surplus money proceedings.

7. That the time to answer or demur to the complaint has expired as to all the defendants, and that no answer or demurrer has been received.

8. Deponent further says that a notice of the pendency of this action in the form prescribed by section 1670 of the Code of Civil Procedure, and containing, as deponent verily believes, correctly and truly all the particulars required by law to be stated in such notice, was on the (*13th*) day of (*December, 1915,*) and more than twenty days since, duly filed, together with the summons and complaint herein, in the office of the Clerk of the County of (*Bronx,*) that being the county in which the mortgaged premises are now situated.

9. That none of the defendants has appeared herein, except as aforesaid, and none of the defendants has put in an answer or demurrer to the complaint herein, and the time of each and every

*Some practitioners specify which of the defendants have been served, which have served notices of appearance and by what attorney or attorneys they appeared, and on what date each notice of appearance was served, specifying the waivers and papers demanded. Where there are a large number of defendants this practice is advisable as a matter of convenience.

Affidavit of Regularity

defendant to answer or demur to said complaint has expired, and the same has not been extended.

10. That all of the defendants herein are of full age and none of said defendants is proceeded against as an incompetent or absentee.

11. That since the filing of the said notice of the pendency of action the summons and complaint herein have not been amended by making new parties to the action or so as to affect other property not described in the said notice, or so as to extend the claim of the plaintiffs against the mortgaged premises.

12. *(That the defendant, Grace Jones, was made a party defendant by reason of the fact that she made the bond for \$15,000, dated October 16, 1911, to the Globe Mortgage Company to secure payment of which the said mortgage herein sought to be foreclosed was executed, and that judgment was demanded against her for any deficiency which might arise on a sale of the said premises. That the plaintiffs have endeavored to find the said Grace Jones for the purpose of serving her with the summons and complaint in this action, but have been unable to do so. They have ascertained, however, and are satisfied from the result of their inquiries, that a judgment against her, even if obtained, would be of no value. That the said Grace Jones is not a necessary party to the action, and the plaintiffs have decided to dispense with a deficiency judgment against her.)*

13. That the defendant (*John W. Minor*) is not a necessary party in this action, said (*John W. Minor*) having been named in the summons and complaint as a party defendant for the reason that he was a judgment creditor whose lien was prior, and the said judgment in favor of said (*Minor*) having been satisfied and discharged of record on (*June 15, 1915*) subsequent to the commencement of this action, and that plaintiff requests that an order be entered striking his name as a party hereto from the summons and complaint and notice of pendency of this action.

14. That since the commencement of this action the plaintiffs have learned that the correct name of the defendant sued herein as ("*Mary*" *Warren*) is (*Anna L. Warren.*)

15. That no previous application has been made for the relief asked for.

16. That proceedings herein have been regular and in accordance with the rules and practice of this Court and this affidavit is

Affidavit of Regularity

made for the purpose of obtaining an order directing that this action be discontinued as against the defendant (*Grace Jones*,) and that the name of said defendant be stricken from the papers herein as a party defendant hereto, and that the summons, complaint and notice of pendency of action herein and all other papers herein be amended by changing the name wherever found of the defendant sued herein as ("*Mary*" *Warren*) to (*Anna L. Warren*) without prejudice to any of the proceedings heretofore had herein, and that the plaintiffs have judgment for the relief demanded in the complaint herein and that the matter be referred to some suitable person as referee to ascertain and compute the amount due to the plaintiffs herein for principal and interest upon the bond and mortgage mentioned in the complaint herein, and for such other and further relief as to the Court may seem just and proper.

(*HAROLD HOWE*.)

Sworn to before me, this }
(2nd) day of (*February*, 1916). }

(*THOMAS BURG*,)

Notary Public, (*No. 34*)

County of (*New York*.)

Order

FORM No. 367

Order of Reference to Compute Amount Due

At a Special Term of the Supreme Court of the State of New York, held in and for the County of (*Bronx*) at the County Court House, in the (*Borough of Bronx, City of New York,*) on the (*19th*) day of (*April, 1916.*)

PRESENT:

Hon. (*GEORGE V. MULLAN,*)

Justice.

(*FRANK HOFFMAN as sole surviving trustee under the Last Will and Testament of Abraham Milton, deceased,*)

Plaintiff,

against

(*MULLER BUILDING COMPANY and others,*)

Defendants.

County Clerk's Index
No. (636 of
(1916)

On reading the summons herein, dated (*March 13, 1916*) and the complaint herein verified (*March 13, 1916*) and the notice of pendency of action herein, dated (*March 13, 1916,*) all filed herein on (*March 14, 1916,*) the order dated (*March 24, 1916, appointing James Simms, Esq., receiver of the rents and profits of the mortgaged premises on behalf of the plaintiff,*) the four affidavits of service of (*Frederick Lawson,*) (*three*) verified (*March 17, 1916,*) (*and one verified April 17, 1916,*) and the notice of object of action and of no personal claim, all filed herein on (*April 18, 1916,*) and the affidavit of (*Charles Sawyer,*) verified (*April 18, 1916,*) and annexed hereto, from which it appears that this action was brought to foreclose a mortgage, that the whole amount secured thereby is due and that the summons was duly served upon all the defendants herein more than twenty days since, that all the defendants herein have defaulted in pleading and no answer or demurrer has been served

Order

and that none of the said defendants has appeared herein, and that none of said defendants is an infant, incompetent or absentee, (*that the defendant Mabel M. Moss is mentioned and described herein as "Phoebe Snow" the said name "Phoebe Snow" being fictitious, the true name of said defendant being unknown to plaintiff, plaintiff intending thereby to designate an occupant or tenant of the mortgaged premises, and that plaintiff has since the commencement of this action learned the true name of said defendant to be Mabel M. Moss, and also that there was at the commencement of this action no other occupant or tenant of the premises a mortgage on which is being foreclosed herein, whose true name is not stated herein, and also that the defendant Grace Jones is not a necessary party hereto,*) that notice of the pendency of this action was filed more than twenty days since and that none of the defendants herein is entitled to notice of this application, and due deliberation having been had, and that since the filing of said notice, the summons and complaint herein have not been amended by making new parties to the action or so as to affect premises not described in said notice, and on all the pleadings and proceedings herein,

Now on motion of (*Hill & Spencer,*) attorneys for the plaintiff, it is

ORDERED that this motion be and it is hereby in all respects granted and that the plaintiff have judgment for the relief demanded in the complaint with Ten dollars (\$10) costs to the plaintiff, and it is further

ORDERED (*that the summons and complaint, notice of object of action and of no personal claim, notice of pendency of action and all papers herein, heretofore filed in the office of the Clerk of the County of New York, and all proceedings heretofore had herein, be and the same hereby are amended by striking out the words "Phoebe Snow, the said name Phoebe Snow being fictitious, the true name of said defendant being unknown to plaintiff, plaintiff intending thereby to designate occupant or tenant of the mortgaged premises" and substituting therefor the words "Mabel M. Moss"; and it is further*)

ORDERED (*that Grace Jones be stricken out as a party defendant, and it is further*)

ORDERED that this action be and it is hereby referred to (*Charles F. Hammond, Esq., counsellor at law, of No. 2 Rector*

Summons

Street, New York City,) to compute the amount due to the plaintiff herein on the bond and mortgage mentioned in the complaint herein,* and that on the coming in of the referee's report, the plaintiff have the usual judgment of foreclosure and sale and for costs and an extra allowance without further notice, and that said referee make his report to this court with all convenient speed.

Enter.

(G. V. M.)

J. S. C.

FORM No. 368

Summons to Attend Before Referee

SUPREME COURT,
(*Bronx*) County.

(<i>LONDON TRUST COMPANY,</i>) et	}
(<i>JOHN GALE,</i>) et al.,	
Plaintiffs,	
against	
(<i>JOHN GALE,</i>) et al.,	}
Defendants.	

BY VIRTUE OF AN ORDER in the above action, made by the Hon. (*John M. Tierney,*) one of the Justices of the Supreme Court of the State of New York, (*CHARLES F. HAMMOND,*) the Referee appointed in this action, DO HEREBY SUMMON you to appear at my office No. (2 *Rector Street, Borough of Manhattan, City of New York,*) on the (23d) day of (*February,* 1916,) at (two) o'clock in the (after)noon, to attend a hearing of the matters in the said action, in reference before me, as such Referee, pursuant to said order. And hereof fail not at your peril.

* NOTE.—If any defendants are infants or absentees the order should read: "and to take proof of the facts and circumstances stated in the complaint, and to examine the plaintiff or his agent on oath as to any payments which have been made."

Oath

Dated the (18th) day of (*February*) in the year one thousand nine hundred and (*sixteen.*)

(*CHARLES F. HAMMOND,*)

Referee.

To

(*CHARLES NEVINS,*) Esq.,

Attorney for Defendants, (*John Gale,*) and (*Ethel Gale,*)

(198 *Broadway,*)

(*Mahattan,*)

(*New York City.*)

UNDERWRITING

To compute and ascertain the amount due to the plaintiff for principal and interest upon the Bond and Mortgage set forth in the plaintiff's complaint which is filed in this action.

(*CHARLES F. HAMMOND,*)

Referee.

FORM No. 369

Oath of Referee

SUPREME COURT,

(*New York*) County.

(*THE EMIGRANTS' INDUSTRIAL SAVINGS BANK,*)

Plaintiff,

against

(*EMIL RAMEL*) and others,

Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

I, (*John Jones,*) the referee, appointed by an order of this court, made and entered in the above-entitled action, and bearing date the (*eleventh*) day of (*April*, 1916,) to ascertain and compute the amount due to the plaintiff upon the bond and mortgage upon which this action was brought,* do solemnly swear that I will faithfully and fairly determine the question so referred to me,

* See footnote, p. 756.

Report of Referee

and make a just and true report thereon according to the best of my understanding. (JOHN JONES.)

Sworn to before me, this
(12th) day of (April, 1916.)

(JOHN SMITH,)

Notary Public, (New York) County.

FORM No. 370

Report of Referee to Compute

SUPREME COURT,
(New York) County.

(THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,)

Plaintiff,

against

(EMIL RAMEL,) and others,
Defendants.

To the Supreme Court:

In pursuance of an order of this court, made and entered in the above-entitled action and dated the (8th) day of (February, 1916,) whereby it was referred to the undersigned as referee to ascertain and compute the amount due to the plaintiff upon and by virtue of the bond and mortgage upon which this action was brought,

I, (John Jones,) the referee in the said order named, do report, that before proceeding to hear the testimony I was first duly sworn faithfully and fairly to determine the question referred to me, and to make a just and true report thereon, according to the best of my understanding, that I have computed and ascertained the amount due to the plaintiff upon and by virtue of the said bond and mortgage and that I find and accordingly report that there is due to the plaintiff for principal and interest on the said bond and mortgage,* at the date of this my report, the sum of (sixteen thousand two hundred and seventeen 50/100) dollars.

* If anything is due for taxes, insurance, assessments, etc., this should also be included as follows:

"and for taxes, assessments and insurance due and unpaid."

unless by the terms of the mortgages on default in payment thereof these are made a part of the principal and secured by the mortgage lien.

Report of Referee

SCHEDULE A., hereunto annexed, contains a schedule of the documentary evidence introduced before me, and shows the amounts due for principal and interest respectively, the period of the computation of the interest and its rate.

Dated, (*February 23, 1916.*) (JOHN JONES,) Referee.

SCHEDULE A

Abstract of Documentary Evidence

One bond bearing date the (16th) day of (*October, 1911*) made and executed by (*Emil Ramel*) to the (*Emigrants' Industrial Savings Bank*) in the sum of (*fifteen thousand*) dollars, to secure the payment of the sum of (*fifteen thousand*) dollars, on the (16th) day of (*October, 1914,*) with interest at the rate of 6 per cent per annum. Marked Exhibit A.

One mortgage of even date with said bond, made and executed by (*Emil Ramel*) and (*Clara, his wife,*) to (*The Emigrants' Industrial Savings Bank*) as security for the payment of the amount mentioned in the condition of the said bond, acknowledged the (16th) day of (*October, 1911*) and recorded in the office of the (*Register*) of the County of (*New York*) on the (17th) day of (*October, 1911*), in Block Series Mortgages, Section (12), Liber (55) at Page (452) and indexed under Block No. (3256) on the land map of the (*City of New York.*) Marked Exhibit B.

Any other documentary evidence should follow here, as assignments of mortgage, policies of insurance, etc.

Statement

Principal of bond and mortgage unpaid.....	\$15,000 00
Interest thereon from (<i>October 16, 1914, to February 23, 1916, 1 year, 4 months, and 7 days</i>)	
at rate of 6 per cent. per annum.....	1,217 50
Taxes, assessment and insurance.....	.....
Total	<u>\$16,217 50</u>

Dated, (*February, 23, 1916.*) (JOHN JONES,) Referee.

Notice of Application

Any testimony taken before the referee should be attached to this report.

The report of the referee to compute is usually delivered to the attorney for the plaintiff. He should see that it is filed with the equity clerk in the county clerk's office, and give all parties entitled thereto, notice of filing of the report, together with notice of application for final judgment of foreclosure and sale. It is deemed by some safer practice to attach a copy of the report to this notice.

Reference to Sell

FORM No. 371

Notice of Filing of Referee's Report and of Application for Judgment of Foreclosure and Sale

SUPREME COURT,
(*New York*) County.

(*COMMERCE BANK OF NEW
YORK,*)

Plaintiff,

against

(*JOHN W. McKEE*) and others,
Defendants.

Sir:

PLEASE TAKE NOTICE, that the report of (*Edward E. McCall,*) the referee appointed to compute the amount due on the bond and mortgage set forth in the complaint in the above-entitled action* has been filed in the office of the Clerk of the County of (*New York*) on the (*6th*) day of (*October, 1916.*)

PLEASE TAKE NOTICE FURTHER, that, upon the summons and complaint herein filed in the office of the Clerk of the County of (*New York,*) on the (*8th*) day of (*June, 1916,*) and on the affidavit of (*William Hudson,*) verified the (*6th*) day of

*In case of infants or absentees add: (and to take proof of the facts and circumstances stated in the complaint and to examine the plaintiff or its agent on oath as to any payments which have been made).

Notice of Application

(*October, 1916,*) and on the affidavits of service, admissions of service, notices of appearance of and on the order of reference made herein on the (*3d*) day of (*October, 1916,*) with proof of service of copies and notice of entry thereof, and on the report of the referee therein named filed herein on the (*6th*) day of (*October, 1916,*) and upon the annexed affidavit of (*William Hudson,*) verified the (*6th*) day of (*October, 1916,*) and on all the papers and proceedings herein, a motion will be made at a Special Term of this court, (*Part I,*) to be held at the County Court House, in the (*Borough of Manhattan,*) City of (*New York,*) on the (*10th*) day of (*October, 1916,*) at 10:30 o'clock in the (*fore*)noon, or as soon thereafter as counsel can be heard, to confirm the said referee's report and for judgment of foreclosure and sale as prayed for in the complaint, with costs, and for an extra allowance in addition to costs under section 3253 of the Code of Civil Procedure, and for such other and further relief as may be just and proper.

Dated, (*New York, October 6, 1916.*)

Yours, etc.,

(*WHITE & CURTIN,*)

Attorneys for Plaintiff,

(*149 Broadway,*)

(*New York City.*)

To

(*WILLIAM J. KIMBALL,*)

(*256 Broadway,*)

(*New York City.*)

Affidavit on Application

FORM No. 372

Affidavit of Regularity on Application for Judgment of Sale

SUPREME COURT,
(*New York*) County.

(COMMERCE BANK OF NEW YORK,)	Plaintiff, against (JOHN W. McKEE and others,)	Defendants.
---------------------------------	--	-------------

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*WILLIAM HUDSON*,) being duly sworn, says that he is (*an attorney at law, associated with White & Curtin*), attorneys for the plaintiff in the above-entitled action and is familiar with the proceedings therein, and that he has charge thereof; that the summons and complaint in said action was filed in the office of the Clerk of the County of (*New York*) on the (8th) day of (*June*, 1916.)

That this action is brought to foreclose a mortgage upon real property situated in the (*City*) and County of (*New York*), executed by defendant (*John W. McKee and Katharine D. McKee, his wife*,) to the (*Commerce Bank of New York*,) to secure the principal sum of (*eighteen thousand, (\$18,000)*) dollars, of which there is now due the sum of (*fifteen thousand (\$15,000)*) dollars, together with interest thereon from (*December 30, 1915*,) at the rate of (*six*) per centum per annum; that the said mortgage is dated on the (*27th*) day of (*August, 1910*,) and was recorded in the office of the (*Register*) of the County of (*New York*) on the (*6th*) day of (*October, 1910*,) in Liber (206) of *Mortgages*, Section (10) at page (285) and was indexed under Block number (3256) on the land map of the (*City of New York*).

That on the (8th) day of (*June, 1916*,) a notice of the pendency of this action, containing the names of the parties thereto,

Affidavit on Application

the object of the action, a description of the property in that county affected thereby, the date of the mortgage and the purpose thereof, and the time and place of recording the same was filed in the office of the Clerk of the County of (*New York*,) that being the county in which the mortgaged premises are situated, and that since the filing of said notice the complaint in this action has not been amended by making any change in the parties to the action, nor so as to affect their property not described in the original complaint, nor as to extend the claim of the plaintiff against the mortgaged premises.

That all of said defendants are of full age, except the defendants (*Frederick Charles Dickenson*) and (*Arthur Henry Dickenson*,) who are infants over the age of fourteen years, and have appeared by (*William J. Kimball*,) their guardian *ad litem*, and that none of the defendants who have not appeared are incompetents or absentees.

Deponent further says that more than twenty days have elapsed since the due service of the summons herein on all the defendants as appears by the affidavit of service and admission of service thereof and notices of appearance hereto annexed, except (*John W. McKee*,) the party herein above mentioned, whose name was stricken from the summons and complaint and notice of pendency of this action by an order entered herein on the (3rd) day of (*October*, 1916).

That the time to answer or demur to the complaint has expired as to all the defendants and that no answer or demurrer has been received, and that none of the defendants have appeared in this action excepting the defendant (*Charles A. Langwell*,) who has appeared herein by his attorney, (*Harris Clayton*,) and waived service of all papers in this action, except notice of sale and of proceedings to obtain surplus moneys, and the defendants (*Frederick Charles Dickenson*) and (*Arthur Henry Dickenson*,) who have appeared herein by (*William J. Kimball*,) their guardian *ad litem* and demanded copies of all papers and notice of all proceedings herein.

That heretofore and on the (3^d) day of (*October*, 1916,) an order was entered herein striking the name of (*John W. McKee*) as a party defendant herein, from the summons, complaint and notice of pendency of this action, without prejudice to the proceedings already had herein, and directing that the action proceed as

Affidavit on Application

if the above-named (*John W. McKee*) had never been made a party thereto, and also referring it to (*Edward E. McCall*,) Esq., to compute the amount due to the plaintiff for principal and interest on the bond and mortgage set forth in the complaint in this action*; that a copy of said order and report was duly served on (*William J. Kimball*,) the guardian *ad litem* of the infant defendants above named; that the report of said referee was duly filed in the office of the Clerk of the County of (*New York*), on the (6th) day of (*October*, 1916) and due notice of such filing has been served on the attorneys for all defendants who have appeared in this action and demanded service of all papers. That neither the real property covered by the mortgage to foreclose which this action is brought, and sought to be sold herein, nor any interest therein is liable to be disposed of as prescribed in article third of title four of chapter eighteen of the Code of Civil Procedure.† That no previous application for this relief has been asked herein.

(*WILLIAM HUDSON*.)

Sworn to before me, this }
(6th) day of (*October*, 1916.) }

(*MABEL C. LAKEY*,)

Notary Public,
(*New York*) County.

At the expiration of not less than eight days after the notice of filing has been given and before the application for final judgment comes on, a certificate should be obtained from the equity clerk that no exceptions to the report of the referee have been filed. And although the rule seems to permit the granting of final judgment without the filing of the usual note of issue, some practitioners deem it safer to have a note of issue filed and the motion brought on in the usual way. The certificate of the clerk that no exceptions have been filed should be attached to the moving papers.

In drawing the final judgment these blanks are left: one for

* (and also to take proof of the facts and circumstances stated in the complaint and to examine the plaintiff or its agent on oath as to any payments that have been made) added when there are defendants who are infants or absentees.

† See Laws 1915, chap. 643.

Note

the amount of costs, one for the amount of extra allowance, and one for the name of the referee. The costs of searches made by a title company may be taxed as a disbursement provided the original searches are produced at taxation and filed with the judgment roll.

A direction is necessary to sell in one parcel or in separate parcels, and if such application has not been made upon the original motion for a reference to compute, it must be supported by affidavits upon application for final judgment.

The exact course of procedure is somewhat indefinite in reference to the sale of property, and a number of courses are open. It is safer, however, to insert in the order of reference, and especially in the final judgment, that the property should be sold in a particular way. If the property consists of more than one parcel, and if it has not been made a part of the order of reference, the question can be raised by affidavits on application for judgment of foreclosure and sale, and the judgment of foreclosure and sale drawn up accordingly, to sell as desired. If, however, it has been ascertained at the last moment, and after the judgment of foreclosure has been obtained and the decree entered, the course to pursue is to make a motion to amend the final decree and insert the proper directions to the referee as to the manner in which the property should be sold.

When a second mortgage is being foreclosed and a blanket mortgage is ahead of you, of course it is absolutely necessary to sell in one parcel, direction should be inserted in the final decree, accordingly.

(Insert in Order of Reference.)

"It is further ordered that the referee examine into the question and report as to whether the property can be sold in parcels (or should be sold in one parcel)."

On motion for final judgment, in actions of foreclosure, and partition where there have been papers printed or extra stenographers' work, it is wise to move that these be allowed as disbursements, and if allowed in the final judgment, may be taxed as part of the bill of costs.

"Where real property, or an interest in real property, liable to be disposed of as prescribed in article third of title four of chapter eighteen of the Code, is sold in an action or special proceeding, or otherwise, to satisfy a mortgage or other lien thereupon, which accrued during the decedent's lifetime, the surplus

Judgment

money must be paid into the surrogate's court having jurisdiction to issue letters testamentary or of administration upon the estate of the decedent in the following cases:

"1. Where eighteen months have not elapsed since the date when letters testamentary or of administration were first issued.

"2. Where a proceeding for a judicial settlement of the accounts of such executor or administrator has been commenced within eighteen months from the date of the issue of such letters and is still pending.

"3. Where no such letters have been issued and two years have not elapsed since the death of the decedent." (Laws 1915, chap. 643.)

FORM No. 373

Judgment of Foreclosure and Sale

At a Special Term of the Supreme Court of the State of New York, held in and for the County of (*Bronx*), at the County Court House (*in the Borough of Bronx of the City of New York*), on the (*7th*) day of (*March*, 1916.)

PRESENT:

Hon. (*JOHN M. TIERNEY*),

Justice.

(*LONDON TRUST COMPANY and MARY DIX, as Executors of and Trustees under the Last Will and Testament of ALICE WING, Deceased,*)

Plaintiffs,

against

(*JOHN GERMAINE*) et al.,
Defendants.

County Clerk's Index
No. (3454-1915.)

Upon the summons and verified complaint heretofore filed in the office of the Clerk of (*Bronx*) County on (*December 13*, 1915,) and upon the notice of the pendency of this action, duly filed in the office of the Clerk of the County of (*Bronx*) on (*De-*

Judgment

ember 13, 1915,) the County in which the mortgaged premises are situated, more than twenty days since and at and after the time of the filing of the complaint as required by law, and upon the affidavit of (*Frank W. Morris*,) sworn to (*December 17, 1915*,) showing due personal service of the summons and a copy of the complaint on defendant, (*John Germaine*,) individually and as surviving member of the firm of (*Warren & Germaine*,) a co-partnership, and upon the notices of appearance and demand of the defendant, (*John Germaine*,) individually and as surviving member of the firm of (*Warren & Germaine*,) a co-partnership, and (*Ethel S. Germaine*,) his wife, and (*Frederick W. Warren and William A. King*, as *Executors of the last will and testament of Daniel E. Warren, deceased*, *Frederick W. Warren*,) individually, and (*Anna L. Warren, his wife, sued herein as "Mary" Warren, and name "Mary" being fictitious, etc.*,) and (*Sophie L. Mack*,) and upon the notice of appearance and waiver for the defendant, The People of the State of New York, and on all the papers and proceedings heretofore had herein, and upon the affidavit of (*Harold Howe*,) sworn to (*February 2, 1916*,) showing that more than twenty days have elapsed since the said defendants were served or appeared except as aforesaid, and none of the defendants have demurred or answered to the complaint herein; that none of the defendants have had their time to answer or demur extended and that none of them is an infant, incompetent or absentee; that this action is brought for the foreclosure of a mortgage upon certain property situated in the County of (*Bronx*) and more particularly described in the complaint herein, and that since the filing of such notice the summons and complaint herein have not been amended by making new parties to the action or so as to affect premises not described in said notice, and that the defendant, (*Grace Jones*,) is not a necessary party defendant hereto; (*and that the true name of the defendant sued herein as "Mary" Warren, the name "Mary" being fictitious, said defendant's true first name being unknown to plaintiffs; is Anna L. Warren*) and an order of reference having been duly made herein on (*February 8, 1916*,) directing that the summons and complaint and notice of pendency of action herein and all other papers and proceedings herein be amended by striking out as a party defendant herein the defendant, (*Grace Jones*,) and directing that this action be discontinued as against the said defendant, (*and further directing*

Judgment

that the name of the defendant sued herein as "*Mary*" Warren, the name "*Mary*" being fictitious, said defendant's true first name being unknown to plaintiffs, be changed to Anna L. Warren, the true name of said defendant, without prejudice to any proceedings heretofore had herein,) and further directing (Charles F. Hammond,) Esq., as referee to ascertain and compute the amount due to the plaintiffs for principal and interest upon the bond and mortgage mentioned in the complaint herein, and said referee having duly made his report herein, bearing date the (23d) day of (February, 1916,) and filed in the office of the Clerk of the County of (Bronx) on the (25th) day of (February, 1916,) by which it appears that the sum of (sixteen thousand two hundred and seventeen and fifty one hundredths dollars (\$16,217.50)) was due to the plaintiffs on the bond and mortgage mentioned in the complaint herein on the said (23d) day of (February, 1916.)

NOW, on motion of (Done & Done,) attorneys for the plaintiffs herein, it is

ORDERED, ADJUDGED AND DECREED that the report of said referee be and the same hereby is in all respects ratified and confirmed, and on like motion it is further

ORDERED, ADJUDGED AND DECREED that the plaintiffs are entitled to have judgment herein for the sum of (sixteen thousand two hundred and seventeen and fifty one hundredths dollars (\$16,217.50,)) with interest thereon from the date of said report, besides the sum of (one hundred forty-seven and fifty-two one hundredths (\$147.52)) dollars, as taxed by the Clerk of the Court and hereby adjudged to the plaintiffs for costs and disbursements in this action, with interest thereon from the date hereof, together with an additional allowance of (two hundred (\$200.00)) dollars hereby awarded to the plaintiffs in addition to costs, with interest thereon from the date hereof; and on like motion it is further

ORDERED, ADJUDGED AND DECREED that the mortgaged premises described in the complaint in this action and as hereinafter set forth, or such part thereof as is sufficient to discharge the mortgage debt, the expenses of the sale, and the costs of this action, as provided by §§ 1626 and 1676 of the Code of Civil Procedure, and which may be sold separately and without material injury to the parties interested, be sold as hereinafter

Judgment

stated at public auction at the (*Bronx County Real Estate Exchange salesrooms, Nos. 3208-3210 Third Avenue in the Borough of the Bronx of the City of New York,*) by or under the direction of (*Charles F. Hammond, Esq., counselor-at-law,*) who is hereby appointed referee for that purpose; the said referee give public notice of the time and place of such sale according to law and the course and practice of this court; * that the plaintiffs or any other party to this action may become the purchaser or purchasers on such sale; that said referee execute to the purchaser or purchasers on such sale a deed of the premises sold; that such referee on receiving the proceeds of sale forthwith pay therefrom the taxes, assessments and water rents which are or may become liens on the premises at the time of sale with such interest or penalties as may have lawfully accrued thereon to the date of payment; the said referee then deposit the balances of such proceeds of sale in (*The Columbia Trust Company, (Bronx,)*) and shall thereafter make the following payments and his checks drawn for that purpose shall be paid by the said depository:

1st. The sum of (*fifty dollars*) to the said referee for his fees herein.

2d. Advertising expenses as shown on the bills presented and certified by the said referee to be correct and duplicate copies of which shall be left with said depository.

3d. Said referee shall also pay to the plaintiffs the sum of (*one hundred forty-seven and fifty-two one hundredths (\$147.52)*) dollars adjudged to the plaintiffs for (*their*) costs and disburse-

*If property is located in the county of New York, the newspapers in which publication is to be made must be designated in the judgment directing sale. Laws 1916, chap. 589, in effect September 1, 1916, amending § 1678, Code; therefore in such case add:

"by publishing the said notice twice in each week for three successive weeks in two daily newspapers published in the city (*and county*) of New York, to wit: The New York Law Journal and the"

(It is not clear whether the newspapers must be published in the "County" of New York. Common sense would seem to require such a construction of the wording of this amendment, although it is not within the strict letter thereof).

"and said notice to contain a description of the premises to be sold to conform in all respects to that contained or set forth in said complaint." One Judge in the county of New York requires this or a similar clause to be inserted in the decree. Others approve the new short form. See *Wright v. Ackerman*, Nov. 1916, Special Term; 97 *Misc.* 163.

Judgment

ments in this action, with interest thereon from the date hereof, together with an additional allowance of (*two hundred dollars*,) hereby awarded to the plaintiffs in addition to costs, with interest thereon from the date hereof; and also the sum of (*sixteen thousand two hundred and seventeen and fifty one hundredths dollars* (\$16,217.50,)) the said amount so reported due as aforesaid, together with the legal interest thereon from the date of said report, or so much thereof as the purchase money of the mortgaged premises will pay of the same.

4th. If such referee intends to apply for a further allowance for his fees, he may leave upon deposit such amount as will cover such additional allowance, to await the further order of the court thereon, after application duly made. That in case the plaintiffs be the purchasers of said mortgaged premises at said sale, or in the event that the rights of the purchaser at said sale and the terms of sale under this judgment shall be assigned to and be acquired by the plaintiffs, and a valid assignment thereof filed with said referee, said referee shall not require the plaintiffs to pay in cash the entire amount bid at such sale; but shall execute and deliver to the plaintiffs a deed or deeds of the premises sold upon the payment to said referee of the amounts specified above in items marked 1st and 2d, and the amount of the aforesaid taxes, assessments and water rents and interest or penalties thereon, or in lieu of the payment of said last mentioned amounts upon filing with said referee receipts of the proper municipal authorities, showing the payment thereof; that the balance of the amount bid after deducting therefrom the aforesaid amount paid by the plaintiffs for referee's fees, advertising expenses and taxes, assessments and water rents, shall be allowed to the plaintiffs and applied by said referee upon the amounts due to the plaintiffs as specified above in item marked 3d; that if after so applying the balance of the amount bid there shall be a surplus over and above the said amounts due to the plaintiffs, the plaintiffs shall pay to said referee upon delivery to them of said referee's deed the amount of such surplus; that said referee on receiving said several amounts from the plaintiffs shall forthwith pay therefrom said taxes, assessments, water rents and interest or penalties thereon, unless the same have already been paid, and shall then deposit the balance in said depository as hereinabove directed.

That said referee take the receipt of the plaintiffs or their attorneys for the amounts paid as hereinbefore directed in item

Notice of Sale

marked 3d and file it with his report of sale; that he deposit the surplus moneys, if any, with the (*Chamberlain of the City of New York*) within five days after the same shall be received and be ascertainable, to the credit of this action, to be withdrawn only on the order of the court, signed by the Justice of the court; that the said referee make his report of such sale and file it with the Clerk of the County of (*Bronx*) with all convenient speed; that if the proceeds of such sale be insufficient to pay the amount so reported due the plaintiff with the interest and costs as aforesaid, the said referee specify the amount of such deficiency in his report of sale, and that the defendant, (*John Germaine*,) pay the same to the plaintiff, and that the defendant have execution therefor, and that the purchaser or purchasers at such sale be let into possession of the premises sold to them on production of the referee's deed or deeds of said premises; and it is further

ORDERED, ADJUDGED AND DECREED that each and all of the defendants in this action and all persons claiming under them, or any or either of them, after the filing of such notice of pendency of this action, be and they are hereby forever barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in said mortgaged premises and each and every part thereof.

The following is a description of the mortgaged premises hereinbefore mentioned: (Take in.)

Enter,
(*J. M. T.*,)
J. S. C.

(*JAMES V. GANLEY*,)
Clerk.

Sale

As to who bound by judgment after September 1, 1916, see Laws 1916, chap. 518, adding § 1671(a), Code.

A copy of the judgment of foreclosure and sale should be served on all parties interested.

Notice of sale must then begin by publication of advertisement twice a week for three successive weeks, and in this connection do not forget the requirement of Rule 15 of the Special Term Rules, First Department, that a diagram of the property and the street number must be inserted in the advertisement.

Terms of Sale

Notice of sale is also given to all parties who have appeared in the action and demanded same, by personal service of a copy of the notice of sale upon their attorneys.

As to notice of sale and sale, see generally § 1678, Code, and Rule 62, G. R. P.

FORM No. 374

Terms of Sale

SUPREME COURT,
(*New York*) County.

(CHARLES DODGE,)	Plaintiff,	}
against		
(DENISON OLIVER) and others,	Defendants.	

The premises described in the annexed advertisement of sale will be sold under the direction of (*William Hammond*,) referee, upon the following terms:

Dated, (*New York*, *November 17*, 1916.)

1st. (*Ten*) per cent. of the purchase money of said premises will be required to be paid to the said referee at the time and place of sale, and for which the said referee's receipt will be given.

2d. The residue of said purchase money will be required to be paid to the said referee at his office, No. (111 *Broadway*,) in the (*Borough of Manhattan*,) City of (*New York*,) on the (*second*) day of (*December*, 1916,) at (12 o'clock noon,) when the said referee's deed will be ready for delivery.

3d. The referee is not required to send any notice to the purchaser; and if he neglects to call at the time and place above specified to receive his deed, he will be charged with interest thereafter on the whole amount of his purchase, unless the referee shall deem it proper to extend the time for the completion of said purchase.

4th. All taxes, assessments and other incumbrances, which, at the time of sale, are liens or incumbrances upon said premises, will

Terms of Sale

be allowed by the referee out of the purchase money, provided the purchaser shall, previous to the delivery of his deed, produce to the referee proof of such liens, and duplicate receipts for the payment thereof.

5th. The purchaser of said premises, or any portion thereof, will at the time and place of sale, sign a memorandum of his purchase, and (*pay in addition to the purchase money, the auctioneer's fee of fifteen dollars for each parcel separately sold, and the Exchange Salesroom fee of two dollars for each knock down.*)

6th. The biddings will be kept open after the property is struck down; and in case any purchaser shall fail to comply with any of the above conditions of sale, the premises so struck down to him will be again put up for sale, under direction of said referee, under the same terms of sale, without application to the court, unless plaintiff's attorney shall elect to make such application, and such purchaser will be held liable for any deficiency there may be between the sums for which said premises shall be struck down upon the sale, and that for which they may be purchased on the re-sale, and also for any costs or expenses occurring on such re-sale.

7th. (*The premises will be sold subject to a first mortgage for \$10,000 now a lien thereon, with interest from December 30, 1899, at 5 per cent. per annum, amounting to \$438.70 to date.*)

8th. Said premises shall be sold subject to the tax assessed thereon for the second half of the year (1916.)

(WILLIAM HAMMOND,)

Referee.

MEMORANDUM OF SALE

..... have this day, 191.., purchased the premises in the above-annexed printed advertisement of sale, for the sum of, and hereby promise and agree to comply with the terms and conditions of the sale of said premises, as above mentioned and set forth.

Dated, New York, ..., 191..

New York, ..., 191.. Received from.....
....., the sum of, being ten per cent. on the amount bid by for property sold by me under the order in this cause.

\$.....

Referee's Deed

FORM No. 375

Referee's Deed in Foreclosure (Standardized Form)

THIS INDENTURE, made the (*fifth*) day of (*September*), nineteen hundred and (*sixteen*), between (*James Maxwell*), referee duly appointed as hereinafter mentioned, party of the first part, and (*Frank Brown of 23 West 9th street, Borough of Manhattan, City, County, and State of New York*), part(y) of the second part,

WHEREAS, at a Special Term of the (*Supreme Court of the State of New York, held in and for the County of New York*;) on the (*seventeenth*) day of (*July*), nineteen hundred and (*sixteen*), it was among other things ordered, adjudged and decreed by said Court, in a certain action then pending in said Court between (*James Wilson plaintiff against John Rose and others*), defendants, that all and singular the mortgaged premises described and mentioned in the complaint in said action, and described in said judgment, or such part thereof as might be sufficient to discharge the mortgage debt, the expenses of the sale and costs in said action, and which might be sold separately without material injury to the parties interested, be sold at public auction according to law and the course and practice of said Court, by or under the direction of said party of the first part as referee thereby duly appointed for that purpose; that said referee give public notice of the time and place of such sale according to law and the course and practice of said Court, and that any of the parties to said action might become a purchaser or purchasers at such sale; that the referee execute to the purchaser or purchasers of said mortgaged premises, or such part or parts thereof as should be sold, a good and sufficient deed or deeds of conveyance for the same, (*and pay all taxes, assessments or water rates which were liens upon the property sold.*)

AND WHEREAS, said referee, in pursuance of said judgment, did, on the (*twenty-second*) day of (*August*), nineteen hundred and (*sixteen*), sell at public auction at (*the New York real estate salesroom No. 14 and 16 Vesey street in the Borough of Manhattan, City of New York*) the premises hereinafter described, being in said judgment mentioned, due notice of the time and place of such sale having first been given, pursuant to said judgment, at which sale said premises were struck off to (*Frank*

Referee's Deed

Brown,) part(*y*) of the second part, for the sum of (*nine thousand one hundred and fifty* (\$9,150)) dollars, lawful money of the United States, that being the highest sum bidden for the same,

NOW THIS INDENTURE WITNESSETH, that said referee, the party of the first part to these presents, in order to carry into effect the sale so made by h(*im*) as aforesaid, in pursuance of the judgment of said Court, and in conformity with the statute in such case made and provided, and also in consideration of the premises, and of said sum of money so bidden as aforesaid, paid by the part(*y*) of the second part, does hereby grant and convey unto the part(*y*) of the second part, and to his heirs and assigns forever, ALL (*that certain lot of land with the buildings and improvements thereon, situate, lying and being.* (Description.)

TO HAVE AND TO HOLD the premises herein granted unto the part(*y*) of the second part, (*his heirs*) and assigns forever.

IN WITNESS WHEREOF, the party of the first part has hereunto set h(*is*) hand and seal the day and year first above written.

(*JAMES MAXWELL,*)

Referee.

In presence of
(*JAMES COX,*)

STATE OF NEW YORK, }
County of *New York*, } ss.:

On the (*fifth*) day of (*September*), nineteen hundred and (*sixteen*), before me came (*James Maxwell,*) to me known to be the individual described in, and who executed, the foregoing instrument, and acknowledged that he executed the same.

(*GEORGE THOMPSON,*)

Notary Public,

(*New York*) County No. (106).

Referee's Report

FORM No. 376

Referee's Report of Sale

SUPREME COURT,
(*New York*) County.

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,*)

Plaintiff,

against

(*EMIL RAMEL,*) and others,
Defendants.

To the Supreme Court:

I. (*John Jones,*) the referee appointed by the judgment made and entered in this action bearing date the (14th) day of (*April*, 1915), to make the sale of the mortgaged lands and premises therein particularly described, do respectfully report as follows:

First: That I caused due notice of the sale of the said land and premises on the (9th) day of (*May*, 1915), at the (*New York Real Estate Salesroom, No. 14 and 16 Vesey street,*) in the city of (*New York,*) at (12) o'clock (*noon*) of that day to be given and published according to law and the rules and practice of this court, as will fully appear by the affidavits hereto annexed.

Second: That I attended in person at the time and place for which said sale was noticed, and adjourned the same (*one week to May 16th*, 1915), at the same hour and place, and that on (*May 16th*, 1915), I again attended in person at the time and place aforesaid and adjourned said sale (*one week to May 23d*, 1915,) at the same hour and place, and that I caused due notice of said adjournments to be given and published according to law and the practice of this court, as will fully appear from the affidavits hereto annexed.

Third: That at the time and place for which the said sale was noticed as aforesaid, I attended in person, and, agreeably to such notice, offered the said mortgaged lands and premises for

Referee's Report

sale to the highest bidder, and sold the same to (*William J. Gilroy*) for the sum of (*twenty-five thousand dollars* (\$25,000)), that being the highest sum bidden therefor (and received from the purchaser in cash (*ten*) per cent. of said sum).*

Fourth: That subsequent to said sale and in accordance with the terms of the judgment above referred to, I executed, acknowledged and delivered to (*William J. Gilroy*) the purchaser at such sale, a good and sufficient deed of the premises sold.

Fifth: That I have allowed to the said purchaser, out of the said purchase money, the sum of (*six hundred and nineteen and 93/100* (\$619.93)) dollars paid by him for taxes, which were liens on said mortgaged premises at the time of such sale, and for which receipts are hereto annexed.

Sixth: That I have received from such purchaser the balance of the said purchase money, to wit, the sum of (*twenty-one thousand eight hundred and ninety-two and 57/100* (\$21,892.57)) dollars and have disposed of the same as follows:

1st: I have retained for my fees and expenses on such sale the sum of (*one hundred and seventy-one and 30/100* (\$171.30)) dollars.

2d: I have paid to the attorney for the plaintiff the sum of (*three hundred and sixty-nine and 40/100* (\$369.40)) dollars for the cost and additional allowance awarded to the plaintiff by such judgment and for which a receipt is hereto annexed.

3d: That I have paid to the attorney for the plaintiff the sum due on the bond and mortgage upon which this action was brought, and directed to be paid to it by said judgment the sum of (*fifteen thousand eight hundred and thirty-six and 74/100* (\$15,836.74)) dollars, and for which a receipt is hereto annexed.

4th: That I have paid to the (*Chamberlain of the City of New York,*) for the use of the person or persons entitled thereto the sum of (*eight thousand and fifteen and 13/100* (\$8,015.13)) dollars, the surplus herein, and have taken his receipt therefor, which is hereto annexed.**

* or Fourth: Payment of ten per cent. (10%) deposit was waived by plaintiff's attorneys.

** In case of a deficiency, insert instead of paragraph 4th: "That after such sale herein, and the disposal of the proceeds thereof, as above provided, the amount of the deficiency is the sum of . . . dollars, with interest thereon from the date of this report."

 Referee's Report

Annexed hereto, and made a part of this, my report, is a statement showing the several items aforesaid and the mode of computation of such surplus.

All of which is respectfully submitted.

Dated, (*August 15, 1915.*)

(*JOHN JONES,*)

Referee.

STATEMENT

Amount of purchase money.....	(\$25,000 00)
Allowed for taxes.....	(\$619.93)
Referee's fees and expenses.....	(171 30)
Plaintiff's costs and allowance.....	(369 40)
	(1,160 63)
	(\$23,839 37)

(*April 14, 1915*) amount due on
 bond and mortgage as per judgment (\$15,528 75)
 (*August 15, 1915*), interest to date (307 99)

Amount paid to plaintiff..... (15,836 74)

Surplus (\$8,002 63)

Dated, (*August 15, 1915.*)

(*JOHN JONES,*)

Referee.

Referee's Report

SUPREME COURT,
(*New York*) County.

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,*

Plaintiff,

against

(*EMIL RAMEL*) and others,
Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN JONES*,) being duly sworn, deposes and says: That he is the referee duly appointed herein to make the sale in the above-entitled action and the officer who made such sale; that the report of sale signed by him is in all respects true and correct, and said report and statement annexed thereto contain a true, accurate and complete report of the disposition of the proceeds of such sale.

(*JOHN JONES*,)

Sworn to before me, this }
(15th) day of (*August*, 1915.) }

(*JAMES GALE*.)

Notary Public,

(*New York*) County.

The referee should attach the following papers to his report:

1. Affidavits of publication of notice of sale.
2. Receipted bills for referee's disbursements.
3. Receipted bills for amount of taxes allowed.
4. Terms of sale, signed by bidder.
5. Assignment of bid.

Referee's Report

SUPREME COURT,
(*New York*) County.

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,*)

Plaintiff,

against

(*EMIL RAMEL,*) and others,
Defendants.

RECEIVED (*August 14, 1916*), of (*John Jones,*) the referee who made the sale of the premises under and by virtue of the judgment in the above-entitled action, the sum of (\$15,836 and 74/100) dollars, which sum, being part of the proceeds of the sale of the said premises, is received by me under and by virtue of the provisions of said judgment, being the amount adjudged to be paid to said plaintiff, with interest thereon, as mentioned in said judgment.

(*WILLIAM ORR,*)

Attorney for Plaintiff.

SUPREME COURT,
(*New York*) County.

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,*)

Plaintiff,

against

(*EMIL RAMEL,*) and others,
Defendants.

RECEIVED (*August 14, 1915*) of (*John Jones,*) the referee who made the sale of the premises under and by virtue of the judgment in the above-entitled action, the sum of (\$369 and 40/100) dollars, being the amount of the costs and disbursements of the plaintiff in said action, as taxed, with interest thereon and

Referee's Report

additional allowance, which are paid by said referee under and by virtue of the provisions of said judgment.

(*WILLIAM ORR,*)

Attorney for Plaintiff.

SUPREME COURT,
(*New York*) County.

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,*)

Plaintiff,

against

(*EMIL RAMEL,*) and others,
Defendants.

RECEIVED (*August 14, 1915*) of (*John Jones,*) referee herein, pursuant to the judgments in this action, the sum of (\$8,002 and 63/100) dollars, being surplus moneys received on the sale of the premises in the above-entitled action.

(*HENRY BRUERE,*)

(*Chamberlain of the City of New York.*)

The referee must within thirty days after completing the sale and executing the proper conveyance to the purchaser, unless such time be extended by an order of the Court entered in the office of the Clerk within said thirty days, file with the Clerk the above report under oath of the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payments were ordered to be made. It should not be overlooked that by amendment of 1915, where real property, or an interest therein is liable to be applied to the payment of decedent's debts, as provided in § 2701 *et seq.* of the Code, the surplus money must be paid into the Surrogate's Court as provided in § 1633, Code. (See Laws of 1915, chap. 643.)

Notice of Filing of Report

FORM No. 377

Notice of Filing of Referee's Report of Sale

SUPREME COURT,
(*New York*) County.

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,*)

Plaintiff,

against

(*EMIL RAMEL,*) and others,
Defendants.

Sir:

PLEASE TAKE NOTICE that the report of (*John Jones,*) Esq., the referee appointed by the judgment in this action to sell the mortgaged premises, was filed in the office of the clerk of this court on the (14th) day of (*August, 1915*).

Dated, (*New York, August 14, 1915.*)

Yours, &c.,

(*WILLIAM ORR,*)

Attorney for Plaintiff,

(120 Broadway,

New York City.)

To

(*JOHN DALE,*) Esq.,

Attorney for defendant (*JAMES T. RUSSELL,*)

(71 Broadway,

New York City.)

The service of notice of filing of the referee's report of sale is frequently omitted.

SURPLUS MONEY PROCEEDINGS

Where the real property sold or an interest therein is liable to be disposed of for debts of a decedent under § 2701 *et seq.* of the Code, it is now provided (1915) that the surplus money must be paid into the Surrogate's Court having jurisdiction to issue letters testamentary or of administration upon the estate of the decedent in the following cases:

1. Where eighteen months have not elapsed since the date when letters testamentary or of administration were first issued.

2. Where a proceeding for a judicial settlement of the accounts of such executor or administrator has been commenced within eighteen months from the date of the issue of such letters and is still pending.

3. Where no such letters have been issued and two years have not elapsed since the death of the decedent. (See Laws 1915, chap. 643.)

Otherwise the following proceedings regulate the disposition of surplus moneys.

A notice of claim to surplus moneys must be filed in the office of the clerk where the report of sale is filed before application for the appointment of a referee is made.

Upon such application regular notice of motion must be given to those who have filed such notices or appeared in the action. The order of reference will be granted upon proof of due notice to all such parties and an affidavit of the claimant's attorney.

Notice of Claim to

FORM No. 378

Notice of Claim to Surplus Moneys

SUPREME COURT,
(*New York*) County.

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,*)

Plaintiff,

against

(*EMIL RAMEL,*) and others,
Defendants.

To

(*William F. Schneider,*)

The Clerk of the County of (*New York.*)

Sir:

TAKE NOTICE, that (*James T. Russell,*) who resides at (*No. 229 W. 10th Street,*) in the (*Borough of Manhattan, City of New York,*) is entitled to the surplus moneys, or some part thereof, arising from the sale of the mortgaged premises, under judgment of foreclosure and sale entered in the above-entitled action; that the extent of the claim of the said (*James T. Russell*) is as follows: Said (*James T. Russell*) recovered a judgment in the (*Supreme*) Court, (*New York*) County, against (*Emil Ramel,*) the defendant above named, in an action in which said (*James T. Russell was sole plaintiff,*) which judgment was docketed in the office of the Clerk of the County of (*New York*) on the (*2d*) day of (*May, 1915,*) and an execution against the property of said (*Emil Ramel*) issued upon said judgment on the (*1st*) day of (*June, 1915,*) to the Sheriff of the County of (*New York,*) was by said Sheriff returned wholly unsatisfied on the (*14th*) day of (*August, 1915.*) And that the said (*James T. Russell*) claims that said judgment is a lien upon said mortgaged premises next in priority after the mortgage of the plaintiff in this action, and is first lien upon said surplus moneys.

Dated, (*10th Feby., 1916.*)

(*JAMES T. RUSSELL,*) Claimant.

By (*R. Dudensing,*) his atty.,

(*71 Broadway,*

N. Y. City.)

Affidavit

FORM No. 379

Affidavit on Application for Appointment of Referee

SUPREME COURT,
(*New York*) County.

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,*)

Plaintiff,

against

(*EMIL RAMEL,*) and others,
Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*Richard Dudensing, Jr.,*) being duly sworn, says that he is attorney for (*James T. Russell,*) who had and claimed a lien on the mortgaged premises at the time of the sale in this action.

That this action was brought to foreclose a mortgage upon certain premises therein described, situated in the County of (*New York.*)

That on the (30th) day of (*September, 1915,*) a final judgment was entered therein, in the office of the Clerk of the County of (*New York*) for the foreclosure of said mortgage and the sale of said premises, and said premises were sold pursuant to said judgment by (*John Jones,*) referee, on the (10th) day of (*November, 1915.*)

That the report of said referee, dated (*December 10, 1915,*) has been filed in the office of the Clerk of the County of (*New York,*) by which report it appears that after paying the amounts directed in and by said judgment to be paid out of the proceeds of said sale there remained a surplus of (*twenty-one hundred*) dollars, which amount has been paid by said referee into court and deposited with the (*Chamberlain of the City of New York*) to the credit of this action and for the use of the persons entitled thereto.

That said (*James T. Russell*) is entitled to said surplus moneys, or some part thereof, and that the nature and extent of his claim thereto are set forth in the notice hereinafter mentioned.

Order

That from all the searches for conveyances and incumbrances made in this action, and filed with the judgment roll herein, the following unsatisfied liens upon said surplus moneys, and no others, appear:

(Specify liens.)

and no other unsatisfied liens thereon are known to this deponent to exist.

That the notice of the claim of the said (*James T. Russell*) to such surplus moneys has been filed by him with the Clerk of the County of (*New York*), a copy of which is hereto annexed and marked Exhibit A.

RICHARD DUDENSING, JR.

Sworn to before me, this }
(4th) day of (*March*, 1916.) }

(*BENJAMIN BENSON*),

Notary Public,

(*New York*) County.

FORM No. 380

Order Appointing Referee to Determine

At a Special Term, (*Part I*), of the Supreme Court, held in and for the County of (*New York*), at the County Court House in (*the Borough of Manhattan, City of New York*), on the (*fifth*) day of (*March*, 1916.)

PRESENT:

Hon. (*CHARLES L. GUY*),

Justice.

(*MARY ELDRIDGE*, as executrix of
the last will and testament of Ben-
jamin Eldridge, deceased,)

Plaintiff,

against

(*THEODORE THROOP et al.*),

Defendants.

On reading and filing a notice of claim by (*James T. Russell*) to surplus moneys in this action, and on motion of (*Richard Dudensing, Jr.*) attorney for the said (*James T. Russell*), and on

Order

reading and filing proof of due service of notice of this application on all the parties who have appeared in said action, and no one appearing to oppose said motion, and (*John J. McKelvey*) appearing for the (*White Sewing Machine Company*),

ORDERED, that it be referred to (*John Jones*), Esq., of (*the City of New York*), as a referee to ascertain and report the amount due the said (*James T. Russell*), or to any other person, which is a lien upon such surplus moneys, and to ascertain the priorities of the several liens thereon, and that the said referee report thereon with all convenient speed.

Enter,

(*C. L. G.*),

J. S. C.

Upon the reference the referee should have presented to him:

I. Certificate of the clerk as to who have appeared and filed claims against the surplus moneys.

II. Certificate of the Chamberlain as to the amount of the surplus funds deposited with him.

III. Such other evidence as he shall require to satisfactorily determine the priority of the claims.

The proceedings are the same as those in an ordinary reference to hear and determine.

The referee must issue a subpoena to all who have claims against the surplus moneys.

Referee's Report

FORM No. 381

Report of Referee

SUPREME COURT,
(*New York*) County.

(<i>MARY ELDRIDGE</i> , as executrix of the last will and testament of Ben- jamin Eldridge, deceased,)	} Plaintiff,
against	
(<i>THEODORE THROOP et al.</i> ,)	
Defendants.	

To the Supreme Court:

I, the undersigned, referee appointed by an order of this court granted on the (5th) day of (*March*, 1916,) to ascertain and report the amount due to (*James T. Russell*) or to any other person, which is a lien upon the surplus moneys in this action, and to ascertain and report the priorities of the several liens thereon, do respectfully report:

That I caused all parties who have appeared in this action, and all persons who have filed notices of claim upon the surplus moneys, and all persons who were known to have liens thereon, as appears by the certificate of the clerk, which is hereto annexed, showing who have appeared in the action and filed notices of claim, and by the affidavit of (*R. Dudensing, Jr.*) attorney for the claimant, (*James T. Russell*), showing what liens appear upon the searches on file, to be summoned to appear before me, as appears from the proof of service of the subpoena herein, which is also hereunto annexed.

That on said hearing I was attended by (*R. Dudensing, Jr.*) attorney for the claimant, (*James T. Russell*), and by (*John J. McElvey*), attorney for the (*White Sewing Machine Company*), and by (*Knevals & Perry*), attorneys for (*Theodore Throop* and *Elizabeth M. C. Throop*;) that the testimony of the witnesses upon such hearing was read and signed by them, and that such testimony and all the evidence except such of it as was documentary, is annexed to this report.

Referee's Report

That from such testimony and evidence I make the following

FINDINGS OF FACT

I. That the amount of the surplus moneys in this action is the sum of (*twenty-one hundred*) dollars, as appears by the certificate of the (*Chamberlain of the City and County of New York,*) filed in the office of the Clerk of the County of (*New York*) on the (*10th*) day of (*February, 1916.*)

II. That on the (*12th*) day of (*January, 1909,*) the defendants, (*Theodore Throop and Elizabeth M. C. Throop,*) made, executed and delivered unto the claimant, (*James S. Russell,* *their certain bond and mortgage of the property which is the subject of this action, dated the 12th day of January, 1909, to secure the payment of the sum of four hundred and fifty dollars, upon the 12th day of January, 1914, with interest thereon semi-annually at the rate of five per centum per annum, payable on the twelfth days of July and January, and recorded in the office of the Register of the City and County of New York on the 14th day of January, 1909, at 12 o'clock and 50 minutes P. M. in Block Series Mortgages, Section 12, Liber 2376, at page 267, and indexed under Block No. 3256 on the Land Map of the City of New York.*)

III. That no part of the principal or interest upon said (*bond and mortgage*) has ever been paid.

IV. That on the (*22d*) day of *June, 1912, an action was begun in the Supreme Court by the White Sewing Machine Company against Theodore Throop, and upon the same day a warrant of attachment against the property which is the subject of this action was issued to the sheriff of the City and County of New York, and an undertaking on attachment was approved and filed in the office of the Clerk of the County of New York.*)

V. That on the (*23d*) day of (*November, 1912, judgment was rendered in said action in favor of the White Sewing Machine Company and against the said Theodore Throop for one thousand and one 56/100 dollars, and was filed in the office of the Clerk of the County of New York.*)

VI. That upon the (*23d*) day of (*November, 1912, said judgment was entered upon the docket of judgments in the office of the Clerk of the County of New York.*)

Referee's Report

VII. That (*execution was issued upon said judgment on the 23d day of November, 1912, but no part of the same has ever been satisfied.*)

[VIII. That no part of said judgment has ever been paid or satisfied.]

And, from the foregoing findings of fact, I further find the following:

CONCLUSIONS OF LAW

I. That after paying the costs and disbursements of this reference, the liens upon said surplus moneys are as follows:

II. That there is due and owing to the said claimant, (*James T. Russell,*) under and by virtue of the said (*bond and mortgage,*) the sum of (*four hundred and fifty*) dollars, principal, together with (*ninety-four*) dollars and (*sixty-three*) cents interest from the (*12th*) day of (*January, 1909,*) to the date of this report, at the rate of (*five*) per centum per annum, amounting in all to the sum of (*five hundred and forty-four*) dollars and (*sixty-three*) cents, and that said amount is the first lien on the said surplus moneys in this action.

III. That there is due and owing to the said (*White Sewing Machine Company*) the sum of (*one thousand and one and 56/100*) dollars, and interest thereon from the (*23d*) day of (*November, 1912,*) amounting, at the date of this report, to the sum of (*twenty*) dollars and (*thirty-seven cents,*) upon and by virtue of (*said judgment recovered by it against the said Theodore Throop, as aforesaid,*) and that the said amount is the second lien on the said surplus moneys in this action.

My fees are \$50.

Dated, (*March 25, 1916.*)

(*JOHN JONES,*)

Referee.

Order Confirming Report

FORM No. 382

Order Confirming Referee's Report

At a Special Term of the Supreme Court, held in and for the County of (*New York*) at the County Court House in the (*Borough of Manhattan, City of New York,*) on the (*28th*) day of (*May, 1916.*)

PRESENT:

Hon. (*THOMAS F. DONNELLY,*)

Justice.

(*MARY ELDRIDGE, as executrix of the last will and testament of Benjamin Eldridge, deceased,*)

Plaintiff,

against

(*THEODORE THROOP et al.,*)

Defendants.

On the report of (*John Jones,*) Esq., the referee appointed herein to ascertain and report the amount due to (*James T. Russell,*) and to any other person, which amount is a lien on the surplus moneys in this action, and to ascertain the priorities of the several liens thereon, which report was dated the (*25th*) day of (*March, 1916,*) and filed in the office of the clerk of this court on the (*26th*) day of (*March, 1916,*) and on all the testimony and papers annexed to said report and filed therewith, and it appearing that due notice of the filing of said report and of this motion has been given to the attorneys for the parties who have appeared in this proceeding and who filed notices of claim to such surplus moneys previous to the entry of said order of reference, and after hearing (*R. Dudensing, Jr.,*) attorney for the claimant, (*James T. Russell,*) and no one opposing, it is

ORDERED, that the said report be and the same hereby is in all things confirmed, and that the (*Chamberlain of the City of New York*) pay out and disburse the moneys in his hands to the credit of this action, after deducting therefrom the fees and com-

Order Confirming Report

missions allowed to him by law, as follows, and in the following order or priority:

I. That he pay to (*John Jones*,) Esq., referee in this proceeding, the sum of (*fifty*) dollars, for his fees as such referee.

II. That he pay (*R. Dudensing, Jr.*,) attorney for the claimant, (*James T. Russell*,) the sum of (*sixty*) dollars, as an allowance by way of costs in this proceeding.

III. That he pay to the claimant, (*James T. Russell*,) or to his attorney, (*R. Dudensing, Jr.*,) the sum of (*five hundred*) dollars, and interest thereon from the (*5th*) day of (*February*, 1905,) the date of said referee's report.

(Here follow the different claims in the order of priority, as found by the referee.)

Enter,

(*T. F. D.*,)

J. S. C.

DIVORCE

Where an action is brought to obtain a divorce, the court will in no case order the reference to a referee nominated by either party nor to a referee agreed upon by the parties; and where the defendant fails to answer, no reference will be granted to take proof of the facts stated in the complaint, but the trial must be had in open court.

No judgment will be made by default, but only after trial or hearing and only by special direction of the court.

FORM No. 383

Interlocutory Judgment on Default*

At a Special Term, (*Part III*,) of the Supreme Court of the State of New York held in and for the County of (*New York*,) at the Court House in the (*Borough of Manhattan*,) City of (*New York*,) on the (*10th*) day of (*March*, 1916.)

PRESENT:

Hon. (*JOHN C. CLARK*,)
Justice.

(<i>MARY FOX</i>),	} Plaintiff,
against	
(<i>JOHN FOX</i>),	
Defendant.	

The above-entitled action having been brought by plaintiff for a judgment of divorce in favor of the plaintiff and against the defendant dissolving the marriage relations heretofore existing between the parties hereto, upon the ground of the adultery of

* This judgment must be entered in the County Clerk's Office within fifteen days after signature (§ 1774 Code.)

Application for final judgment must be made within thirty days after three months of said filing.

Interlocutory Judgment on Default

the defendant at the time or times and place or places set forth in the complaint herein; the defendant having been duly served with summons and verified complaint in this action, and twenty days having elapsed since said service, and the defendant not having appeared, answered or demurred thereto, the cause having been duly brought on for trial at Special Term, Part (III) of this Court before Hon. (*John C. Clark*,) one of the Justices of this Court, on the (5th) day of (*March*, 1916,) and the plaintiff by (*her*) attorney having appeared and presented (*her*) verified complaint, written and oral proof of the service of the summons and complaint on the defendant, affidavit of regularity of this proceeding, and testimony having been heard by the Court sustaining the allegations set forth in the complaint, the Court having been thereupon fully advised in the premises, and having made findings of fact and conclusions of law, deciding among other things that the plaintiff was entitled to a judgment against the defendant dissolving the marriage relations heretofore existing between the parties hereto pursuant to the Statute because of the adultery of the defendant:

Now, on motion of (*Frank Choate*,) attorney for the plaintiff, it is

ORDERED, ADJUDGED AND DECREED that the plaintiff is entitled to a judgment, to be entered as hereafter provided dissolving the marriage heretofore existing between the plaintiff and the defendant and freeing the plaintiff from the obligations thereof, and permitting the plaintiff to remarry but forbidding the defendant remarrying any other person during the lifetime of the plaintiff except by express permission of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have the custody of the infant children, the issue of said marriage, (*John Fox, Jr., and Marion Fox*.)

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant pay to the plaintiff the sum of (\$250) monthly as and for the support, maintenance and education of the issue of said marriage, and that the plaintiff have the costs and disbursements of this action to be taxed and inserted by the Clerk in the final judgment herein.

Final Judgment on Default

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the final judgment shall not be entered in this action until the expiration of three months after the entry and filing of the interlocutory judgment, and within thirty days after the expiration of said period of three months final judgment may be entered upon said decision and interlocutory judgment unless otherwise ordered by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment shall be interlocutory only.

Enter,

(JOHN C. CLARK,)

Justice of the Supreme Court.

FORM No. 384

Final Judgment on Default*

At a Special Term Part (III) of the Supreme Court of the State of New York, held in and for the County of (New York) at the County Court House, in the (Borough of Manhattan, City of New York,) on this (15th) day of (June, 1916.)

PRESENT:

Hon. (EDWARD R. FINCH,)

Justice.

(MARY FOX,)

against

Plaintiff,

(JOHN FOX,)

Defendant.

The above cause having come duly on to be heard at a Special Term of the Supreme Court of the State of New York, held at (Part III) thereof, at the County Court House in the (Borough of Manhattan,) City of (New York,) on the (5th) day of (March, 1916,) before Hon. (John C. Clark,) a Justice of the said Court, and the Court having heard the testimony of the plaintiff and

* This Final Judgment must be entered in the County Clerk's office within thirty days after the expiration of three months from the entry of the interlocutory judgment.

Final Judgment on Default

(her) witnesses, the defendant being fully in default, and a decision and interlocutory decree of divorce in favor of the plaintiff and against the defendant having been made on the (10th) day of (March, 1916,) and entered in the Office of the Clerk of the County of (New York) on the (10th) day of (March, 1916,) and it appearing by the Certificate of the Clerk of the County of (New York,) dated the (14th) day of (June, 1916,) and the affidavit of (Frank Choate,) the attorney for the plaintiff herein, verified the (14th) day of (June, 1916,) that said decision and interlocutory judgment were duly filed in the Office of the Clerk of the County of (New York) on the (10th) day of (March, 1916,) and that no order or direction in any way affecting the said judgment, or any application for said order or direction has since been filed in the Office of the Clerk of the County of (New York,) and that final judgment has not been refused.

NOW, on motion of (Frank Choate,) attorney for the plaintiff, it is hereby

ORDERED, ADJUDGED AND DECREED that the marriage between the plaintiff, (Mary Fox,) and the defendant, (John Fox,) be, and the same is dissolved, and the plaintiff is hereby divorced from the defendant. And it is further

ORDERED, ADJUDGED AND DECREED that after the entry of this judgment it shall be lawful for the plaintiff to marry again, the same as if the defendant were dead, but it shall not be lawful for the defendant to marry any person other than the plaintiff, in the lifetime of the plaintiff. And it is further

ORDERED, ADJUDGED AND DECREED that the plaintiff have the custody of (John Fox, Jr., and Marion Fox,) the infant children, the issue of said marriage. And it is further

ORDERED, ADJUDGED AND DECREED that the defendant pay the plaintiff the sum of (\$250) monthly as and for the support and the support and maintenance of the issue of said marriage. And it is further

ORDERED, ADJUDGED AND DECREED that the plaintiff, (Mary Fox,) recover from the defendant, (John Fox,) the sum of (39 45/100,) being (her) taxable costs and disbursements herein, and that (she) have execution against the defendant (John Fox) therefor.

Enter,

(EDWARD R. FINCH,)

Justice of the Supreme Court.

Certificate of Clerk

FORM No. 385

County Clerk's Certificate of Regularity*

CERTIFICATE OF COUNTY CLERK.

COUNTY CLERK'S OFFICE.

I HEREBY CERTIFY that a decision and interlocutory judgment of divorce in favor of (*Mary Fox, the plaintiff,*) in an action brought in the Supreme Court by

(<i>MARY FOX,</i>)	} Plaintiff,
against	
(<i>JOHN FOX,</i>)	
Defendant,	

was entered in this Office on the (10th) day of (*March, 1916,*) and that no order has been filed in this action since the entry of the interlocutory judgment.

Dated, (*New York, June 14th, 1916.*)

(*WILLIAM F. SCHNEIDER,*)

Clerk.

* Usually this certificate bears date the return day of the motion. The original affidavit and notice of motion are handed to the record clerk in the County Clerk's office on that day and his certificate is then attached and submitted with the papers. It has been held, however, that the correct practice is to obtain and serve the certificate as part of the papers on the motion for final decree and then have the certificate continued to the day of the submission of the motion.

Affidavit of Regularity

FORM No. 386

Affidavit of Regularity

SUPREME COURT,
County of (*New York*.)

(<i>MARY FOX</i> ,)	} Plaintiff,
against	
(<i>JOHN FOX</i> ,)	
Defendant.	}

STATE OF NEW YORK, }
County of (*New York*.) } ss.:

(*Frank Choate*), being duly sworn, says that he is the attorney for the plaintiff in the above-entitled action; that a decision and interlocutory judgment of divorce was rendered herein and signed by Mr. Justice (*Clarke*,) on (*March 10, 1916*,) and entered in the Office of the Clerk of the County of (*New York*) on the (*10th*) day of (*March, 1916*,) and that no order or direction of the Court in any way affecting said judgment or application for such an order or direction has since been made to deponent's knowledge, and that said Court has not forbidden final judgment herein.

(*FRANK CHOATE*.)

Sworn to before me this }
(*14th*) day of (*June, 1916*.) }

(*JAMES MANN*,)

Notary Public, No. (32),
(*New York*) County.

Interlocutory Judgment—Contested

FORM No. 387

Interlocutory Judgment of Divorce—Contested

At a Special Term, (*Part III*,) of the Supreme Court, held in and for the County of (*New York*) at the County Court House, in (*the Borough of Manhattan, City of New York*,) on the (*14th*) day of (*October*, 1915.)

PRESENT:

Hon. (*JOHN FORD*,)
Justice.

(<i>MARY POE</i>,) against (<i>JOHN POE</i>,)	Plaintiff, Defendant.
--	---

This cause having been duly commenced by the personal service of the summons and complaint herein on the defendant within the State of New York; and the defendant having answered and the issues having been duly referred to Mr. (*James Bailey*,) an attorney and counsellor at law, as sole referee, to hear and determine the same and report thereon to this court; and the issues in this action having been duly tried before said referee; and said referee having duly made and filed his report herein, wherein and whereby he finds that the allegations of the complaint have been established, and that the plaintiff is entitled to judgment of divorce herein; and it appearing satisfactorily to this court that the defendant herein has been guilty of adultery, as charged in the complaint; and a motion having been made to confirm said report; now, on reading and filing the summons, complaint, answer, testimony, referee's report and notice of motion to confirm said report; and

After hearing (*Mr. Frank R. Denton*,) of counsel for the plaintiff, in support of said motion, and (*Mr. Franklin Barrett*,) of counsel for the defendant, in opposition thereto, it is,

On motion of (*Howe & Denton*,) attorneys for the plaintiff,

Interlocutory Judgment — Contested

ORDERED, ADJUDGED AND DECREED, that the said motion be, and the same hereby is, granted, and that the report of the referee herein be, and the same hereby is in all respect confirmed; and that the plaintiff is entitled to judgment to be entered as herein provided, dissolving the marriage heretofore solemnized between the said plaintiff (*Mary Poe*) and the defendant (*John Poe*) at (*Albany*,) in the County of (*Albany*,) and State of (*New York*,) on the (*18th*) day of (*June*, 1900,) as set forth in the complaint herein, by reason of said defendant's adultery; and freeing the plaintiff from the obligations thereof, and permitting the plaintiff to remarry, but forbidding the defendant remarrying any other person during the lifetime of the plaintiff, except by express permission of the court.

(*Provisions as to the custody and maintenance of children, if any.*)

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendant pay to the plaintiff the sum of (*Two Hundred Fifty* \$250) Dollars monthly as and for the maintenance and education of the issue of said marriage, and that plaintiff have the costs and disbursements of this action to be taxed and inserted by the Clerk in the final judgment herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the final judgment* shall not be entered in this action until the expiration of three months after the filing of the report herein, and the entry and filing of the interlocutory judgment herein, and within thirty days after the expiration of said period of three months, final judgment may be entered upon said report, and interlocutory judgment, unless otherwise ordered by the court.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that this judgment shall be interlocutory only.

Enter,

(*JOHN FORD*,)

Justice Supreme Court.

* The final Judgment must be entered within *thirty* days after the expiration of said period of three months, and cannot be entered after the expiration of such period of thirty days, except by order of the Court on application and sufficient cause being shown for the delay. (§ 1774, Code.)

Notice of Motion for Final Decree — Contested

FORM No. 388

Notice of Motion for Final Decree — Contested

SUPREME COURT,
(*New York*) County.

(<i>MARY POE</i>),	} Plaintiff,
against	
(<i>JOHN POE</i>),	
Defendant.	

SIR:

PLEASE TAKE NOTICE that on the annexed affidavit of (*Frank R. Denton*), sworn to the (*15th*) day of (*January*, 1916,) and on all the pleadings and proceedings herein, a motion will be made before one of the justices of this court, at Special Term, (*Part III*) thereof, to be held at the County Court House in (*the Borough of Manhattan, City of New York*), on the (*20th*) day of (*January*, 1916,) at (10:15) o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, that final judgment of divorce be granted to the plaintiff above named, in accordance with the interlocutory judgment granted herein, and pursuant to Section 1774 of the Code of Civil Procedure; and that the plaintiff have such other and further relief in the premises as may seem just and proper.

Dated, (*New York, January 15*, 1916.)

Yours, etc.,

(*HOWE & DENTON*),

Attorneys for Plaintiff,

Office & P. O. Address,

(*141 Broadway*),

(*Borough of Manhattan*),

(*New York City*.)

To

(*FRANKLIN BARRETT*), Esq.,

Defendant's Attorney,

(*75 William Street*),

(*New York City*.)

 Affidavit — Motion for Final Decree — Contested

FORM No. 389

Affidavit on Motion for Final Decree — Contested

SUPREME COURT,
(*New York*) County.

(<i>MARY POE,</i>)	} Plaintiff,
against	
(<i>JOHN POE,</i>)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*FRANK R. DENTON,*) being duly sworn, says that he is one of the attorneys for the plaintiff in the above-entitled action; that a decision and an interlocutory judgment of divorce in favor of the plaintiff in the above-entitled action was rendered by Mr. Justice (*John Ford*) and was entered in the office of the Clerk of (*New York*) County on the (14th) day of (*October*, 1915,) and that no order or direction of the court in any way affecting said judgment, or application for such an order or direction, has since been made, to deponent's knowledge, and that said court has not forbidden final judgment herein.

(*FRANK R. DENTON.*)

Sworn to before me this }
(15th) day of (*January*, 1916.) }

(*MAX LOFT,*)
Notary Public,
(*New York*) County.

Final Decree — Contested

FORM No. 390

Final Decree of Divorce — Contested

At a Special Term, (*Part III*,) of the Supreme Court held in and for the County of (*New York*) at the County Court House, in (*the Borough of Manhattan, City of New York*,) on the (23rd) day of (*January*, 1916.)

PRESENT:

Hon. (*JOHN C. CLARKE*,)
Justice.

(<i>MARY POE</i> ,)	} Plaintiff,
against	
(<i>JOHN POE</i> ,)	
Defendant.	

This action having been duly commenced by the personal service of the summons and complaint herein on the defendant, (*John Poe*,) within the State of New York; and the defendant having answered; and the issues having been duly referred to (*Mr. James Bailey*,) an attorney and counsellor at law, as sole referee to hear and determine the same and report thereon to this court; and the issues in this action having been duly tried before said referee; and such referee having made and filed his report in writing, containing his findings of fact and conclusions of law and said report having been duly confirmed by an interlocutory decree of divorce in favor of the plaintiff and against the defendant made herein, on the (14th) day of (*October*, 1915,) and entered in the office of the clerk of the County of (*New York*) on the (14th) day of (*October*, 1915,) and it appearing by the certificate of the clerk of the County of (*New York*,) dated the (20th) day of (*January*, 1916,) and the affidavit of (*Frank R. Denton*,) one of the attorneys for the plaintiff herein, verified the (15th) day of (*January*, 1916,) that said decision and interlocutory judgment were duly filed in the office of the clerk of the County of (*New York*) on the (14th) day of (*October*, 1915,) and that no order

Final Decree — Contested

or direction in any way affecting the said judgment or any application for said order or direction has since been made in the office of the clerk of the County of (*New York*,) and that final judgment has not been refused.

NOW, on motion of (*Howe & Denton*,) attorneys for the plaintiff, it is hereby

ORDERED, ADJUDGED AND DECREED.

[Continue as in Form No. 392, page 795.]

SURROGATE'S COURT

Certificates of Notary's Authority

Proof of genuineness of signature and authority of notaries or other officers who take acknowledgments and affidavits to papers to be filed in this Court is usually required if acknowledgments or affidavits are taken outside the county where the proceeding is had.

When taken *in New York State, but outside the County*, the usual "County Clerk's Certificate" of the genuineness of notary's signature and of his authority to act must be obtained from the Clerk of the County where the affidavit or acknowledgment was taken and attached to the paper. Where real estate is devised, it is important, also, in counties where conveyances are recorded in a Register's office, to show proof that notary has duly qualified in accordance with the requirements of the Register's office to take acknowledgments of instruments to entitle them to be recorded.

When taken *outside of the State, but within the United States*, a certificate must be produced from the clerk of *the county in which the officer taking the acknowledgment resides*. This certificate must show that the officer taking the acknowledgment is an officer of the State where it is taken and is authorized by the laws thereof *to take acknowledgments of deeds to be recorded therein*; that said clerk is well acquainted with such officer's handwriting and verily believes the signature to the original certificate is genuine.

It is well to use the following form of certificate, which is approved by the Surrogate's Court of New York County.

STATE OF

County of

I, ..., Clerk of the County of (and also Clerk of the, the same being a court of record of the aforesaid county, having by law a seal) do hereby certify that, esquire, whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a duly commissioned and sworn and residing in said county, and was, as such, an officer of said State, duly authorized by the laws

 Certificate of Notary's Authority

thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given to his official acts; and I further certify that I am well acquainted with his handwriting and verily believe that the signature to the attached certificate is his genuine signature.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal this.....day of.....

[L. s.] 19....

.....
.....

PROBATE

It is advisable to ascertain before filing petition whether testator used more than one name or had any bank deposits or safe deposit boxes or securities held in a name other than the one he commonly used. If there are any variations in name it is well to add in title of proceeding "also known as....."

In counties where conveyances are recorded in a Register's Office, if real estate passes by the will, it is advisable to have the affidavit of verification as well as acknowledgments to waivers of citation and all proofs of service taken by a notary who has complied with the requirements of the Register's Office.

In several of the counties the Surrogates' Court provides forms for this proceeding. While these forms are not uniform either in style or grouping of papers, their use frequently promotes the convenience of both Court and practitioner as an indication of local requirements and custom.

The following forms assume that all questions as to, by whom the application should be made, and to whom citation should issue, have been accurately determined according to the facts of the case.

The Petition

In drawing the Petition, the following requirements should be kept in mind:

A description of any other wills made by the testator and on file in the office of the Surrogate to whom application for probate is made.

If the name, residence and post-office address of any party interested in the estate is unknown, facts must be set forth to show his interest in the matter, his connection with the testator and what efforts have been made to ascertain his name, place of residence and post-office address. A general description of him and connection with testator and the nature of his interest in the probate should be given.

In describing infants interested, state:

The name, residence and age of each, and relationship to testator.

Whether any infant has a general or testamentary guardian,

Outline of Procedure

and if so, the name, residence and post-office address of such guardian.

The name, residence and post-office address of the person with whom he resides, and relationship to infant.

The name, residence and post-office address of the father, if living.

If the father is dead, that fact should be stated, and the name, residence and post-office address of the mother should be given.

If both parents are dead, that fact should be stated:

In describing persons of unsound mind:

State name, residence and relationship to testator.

Whether he has a committee, and if so, the name and post-office address of the committee.

The name and post-office address of the person or institution having the care or custody of him.

The name and post-office address of a relative or friend having an interest in his welfare.

The facts regarding his incompetency.

As to who should propound the will, see § 2609, Code.

As to contents of the petition generally, see § 2521, Code.

As to who should be cited, see § 2610, Code.

Outline of Procedure

Probate of Will (no Infants)

1. Have at least eight copies of will made.

If you have reason to believe there may be a will in decedent's safe deposit box, procure order from Surrogate for opening of box in presence of representative of State Comptroller and filing of will by safe deposit company in Surrogate's Court. (See Forms No. 405-6, p. 832, *et seq.*)

2. Have one copy compared with original will by two adult persons.

Draw and have executed affidavit of such persons that they compared the copy with the original will and that the copy is a true and correct one.

3. Ascertain names, addresses and post-office addresses of all persons interested as legatees, heirs-at-law, or next of kin, with degree of kinship by making family tree.

Outline of Procedure

4. Draw and have executed any waivers of citation.
5. Draw and have verified the petition for probate.
6. Draw and have verified the executors' oath.
7. Prepare designation of clerk as person upon whom service can be made. (§ 2565, Code.)
8. Prepare order for service of citation by publication and mailing, if needed.
9. Prepare citation.
10. File petition for probate, waivers of citation, executors' oath, designation of clerk, order for service by publication, and have citation signed by clerk. (§ 2609, Code.)
 In New York County, with petition file the original will, one copy and affidavit of comparison. (Rule IV.)
 In Kings County, with the petition file copy of the will and on or before the return day of citation, the original will. (Rule V.)
 In Queens County, with the petition file the original will and a sworn copy. (Rule IX.)
 In Bronx County, with the petition file the original will and one copy and an affidavit that two persons of full age have compared the copy with the original will. (Rule IV.)
 Other counties, see Local Rules.
11. Note in diary, return day of citation.
12. Serve citation upon parties who have not waived and obtain admission of service duly acknowledged, and proceed with service of citation by mail and publication, if necessary.
13. Notify subscribing witnesses to will of the return day of the citation and the date and place of probate. (§§ 2611, 2612, Code.)
14. Prepare affidavits of witnesses.
15. Draw notices provided by § 2616, Code, and mail same, and draw affidavit of mailing and file same in Surrogate's Court before the return day of citation, if possible.
16. File citation with proof of service and any additional waivers which have been obtained, with clerk.
 In New York County, when all parties interested have waived service of a citation, all papers must be filed with the probate clerk at least two days before the testimony of the subscribing witnesses will be taken. (Rule V.)
17. Attend before probate clerk with witnesses, original will, if same has not already been filed, affidavits of witnesses and oath of executors. (§ 2612, Code.)

Outline of Procedure

18. Draw decree admitting will to probate; submit same.
19. Will admitted, date Letters are dated
recorded Liber, page (§ 2620,
Code.)
20. If decedent non-resident, file with State Comptroller certi-
fied copies of will, decree admitting probate and letters
within *ten* days. (§ 2489, Code.)
21. Obtain original letters and a sufficient number of certificates
that letters have been granted.
22. File and record will with certificate of proof thereof in
counties in which decedent owned real property within
twenty days after letters are issued. (§ 42, Decedent
Estate Law.)
23. Apply for order to advertise for creditors. (§ 2677, Code.)
24. Obtain order to advertise for creditors. (§ 2677, Code.)
25. Publish notice to creditors in papers designated in order,
once a week for six months. (§ 2677, Code.)
26. Enter in diary, last day to present claims, ...
27. After fifteen days after probate draw and obtain order com-
pelling executor to qualify, or be excluded, if such person
has not renounced or accepted the executorship. (§ 2627,
Code.)
28. Enter in diary, last day for executor to qualify.
29. Draw and obtain order of exclusion upon expiration of time
to qualify. (§ 2627, Code.)
30. Obtain affidavit of publication of notice to creditors.

FORM No. 391

Petition for Probate of Will of Resident Testator

SURROGATES' COURT,
County of (*New York.*)

In the Matter of Proving the Last Will
and Testament of
(*JAMES J. MILLER,*) (*also known*
as JAMES J. MUELLER,)
Deceased,
As a Will of Real and Personal Prop-
erty.

To the Surrogates' Court of the County of (*New York:*)

The petition of (*David Dowd,*) residing at (*No. 16 East 24th street in the Borough of Manhattan, City of New York,*) respectfully states:

That your petitioner is (*one of*) the execut(ors) named in [the Codicil to] the last will and testament of (*James J. Miller, also known as James J. Mueller,*) late of the County of (*New York,*) deceased;

That said last will and testament, herewith presented and hereby offered for probate, relates to both real and personal property, and bears date the (*first*) day of (*August, 1910,*) and is signed at the end thereof by the said testa(tor) and by (*Henry Smith, Frank Nevins and Arthur White*) as subscribing witnesses;

That petitioner does not know of any [other] codicil to said last will and testament, nor is there any [other] (*codicil*) to the best of (*his*) information and belief;

That the said deceased was, at the time of his death, a resident of the County of (*New York*) at (*No. 100 West 111th Street, Borough of Manhattan, City of New York,*) and State of New York, and departed this life in said County, on the (*20th*) day of (*July, 1916,*) at (*St. Luke's Hospital, Borough of Manhattan, City and State of New York*);

Petition — Resident Testator

That (*the widow and*) all the heirs, and all the next of kin of said testa(*tor,*) each person designated in the will herewith presented and hereby offered for probate as executor, testamentary trustee or guardian [of any of them who are infants and have such guardian] and their residences and post-office addresses are hereinafter mentioned in subdivisions *a, b, c* and *d* hereof, as follows:

a. The following named persons who are of full age and of sound mind:

(*Lena Miller, widow*) of deceased, who resides at (100 West 111th Street, Borough of Manhattan, City of New York);

(*John A. Miller,*) a (son) of deceased, who resides at (72 West 59th Street, Borough of Manhattan, New York City, whose waiver of citation is filed herewith);

(*Henry Hendricks, one of the executors named in the will of deceased,*) who resides at (Hotel Plaza, New York City, whose renunciation is filed herewith);

(*Martin Miller, one of the executors named in the will of deceased,*) who resides at (72 West 59th Street, Borough of Manhattan, City of New York);

(*Mary Miller Bernsdorf,*) a (daughter) of deceased, who resides at (Rotterdam, Holland);

(*Rudolph Mueller,*) a (son) of deceased, (whose residence and whereabouts and also whether he is alive or dead are unknown. The only facts regarding said Rudolph Mueller, known to petitioner and to any of the members of his family, are: That in the month of June, 1900, when he was 16 years of age and residing at home with his parents, said Rudolph Mueller left the home without notice or explanation nor any statement to any member of his family as to why he was leaving, where he intended to go or when he intended to return. Diligent inquiries were made at that time as to his whereabouts among all his relatives, friends and acquaintances and at clubs, schools, churches and places which he was known to frequent for information of said Rudolph Mueller. Petitioner has caused similar inquiry and investigation to be made since the death of decedent but has been unable to discover any information as to the present whereabouts of said Rudolph Mueller and therefore knows no place of residence or post-office address at which matter sent by mail would be likely to reach him).

b. The following named persons who are infants over fourteen years of age:

Petition — Resident Testator

(*Gladys Miller*, 18) years of age, a (*daughter*) of deceased, who resides at (100 West 111th Street, Borough of Manhattan, City of New York,) with (*her mother, Lena Miller,*) and [of whom no general or testamentary guardian has ever been appointed].

c. The following named persons who are infants under fourteen years of age:

(*Grace Miller*, 8) years of age, a (*daughter*) of deceased, who resides at (100 West 111th Street, Borough of Manhattan, City of New York,) with (*Lena Miller, her mother, who is appointed testamentary guardian of and trustee for said infant by the will of the decedent herein offered for probate.*)

d. The following named persons who are of full age but of unsound mind:

(*Nicholas Miller,*) a (*son*) of deceased, who resides at (*and is an inmate of Matteawan State Hospital for the Insane at Beacon, N. Y., of whom Jeremy Bender, residing at 200 Clinton Avenue, City of Albany, State of New York, was appointed committee by an order of the Supreme Court, County of Albany, made and entered in the office of the County Clerk of the County of Albany on June 6, 1909.*)

That the value of the real property in this State of which the testator died seized is (*over ten thousand*) dollars and that the value of the personal property of which said testator died possessed is (*less than ten thousand*) dollars.

That said testator left him surviving no widow, [*husband,*] child or children, no adopted child or children, no issue of any deceased child or children, no issue of any deceased adopted child or children.*

That no petition for the probate of the will herewith presented and hereby offered for probate, or for letters of administration on said estate, has been heretofore filed in this or any other Surrogate's Court of this State and that no other will of said testator has been filed in the Surrogate's office of (*New York*) County.

That there is no person designated in the will herewith presented and hereby offered for probate as executor, testamentary trustee or guardian, except as hereinbefore mentioned.

* [No father or mother, no brother or sister of the half or the whole blood, no issue of any deceased brother or sister, no grandfather, no grandmother, no uncle, no aunt and no issue of any deceased uncle or aunt except those hereinbefore mentioned].

Strike out
allegations
not
applicable

Petition — Resident Testator

That there is no person named as executor, testamentary trustee, guardian, devisee, legatee or beneficiary in any other will of the same testator filed in the Surrogate's office of the County of *(New York.)*

That the names and post-office addresses of the devisees, legatees and other beneficiaries named in the will herewith presented and hereby offered for probate, are as follows:

1. The following named persons have been hereinbefore mentioned:

Name of legatee, devisee or beneficiary	Post-office address	Value of legacy or devise
<i>(Lena Miller)</i>	<i>(100 West 111th street, city of New York)</i>	<i>(Life estate in residuary.)</i>
<i>(John A. Miller)</i>	<i>(90 East 72d street, city of New York)</i>	<i>(One-third of the residuary estate.)</i>
<i>(Mary Miller Bernsdorf)</i>	<i>(Rotterdam, Holland)</i>	<i>(One-third of the residuary estate.)</i>
<i>(Grace Miller)</i>	<i>(100 West 111th street, borough of Manhattan, city of New York)</i>	<i>(One-third of the residuary estate.)</i>
<i>(Nicholas Miller)</i>	<i>(Matteawan State Hospital, Beacon, N. Y.)</i>	<i>(Income from trust fund of \$20,000.)</i>

2. The following named persons have not been hereinbefore mentioned:

Name of legatee, devisee or beneficiary	Post-office address	Value of legacy or devise
<i>(Woodlawn Cemetery)</i>	<i>(20 East 23d street, city of New York)</i>	<i>(\$500.00.)</i>

That there are no persons interested in this proceeding other than those hereinbefore mentioned.

Wherefore your petitioner prays:

That a citation to show cause issue herein to the persons hereinbefore named, described, and included in subdivisions *a, b, c* and *d* hereof, citing them to show cause why the last will and testament herewith presented and hereby offered for probate should not be admitted to probate;

That an order be granted directing the service of the citation personally without the State or by publication upon the persons hereinbefore named, described and included in subdivisions *a, b, c* and *d* hereof who are not residents of the State of New York, and also upon the persons hereinbefore described and included in

Waiver of Citation

those subdivisions who and whose names or residences and post-office addresses are unknown and cannot be ascertained; and

That the last will and testament herewith presented and hereby offered for probate may be admitted to probate as a will of real and personal property and that letters testamentary may be issued to the execut(ors) who may qualify thereunder.

Dated, (*New York, August 1, 1916.*)

(*DAVID DOWD,*)

Petitioner.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*David Dowd,*) the petitioner named in the foregoing petition, being duly sworn, depose(s) and say(s) that h(e) ha(s) read the foregoing petition subscribed by h(im) and knows the contents thereof; and that the same is true to h(is) own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters h(e) believes it to be true.

(*DAVID DOWD,*)

Petitioner.

Sworn to this (1st) day }
of (*August, 1916.*) }

(*JOHN DAWSON,*)

Notary Public,

(*New York*) County.

(*County Clerk's No. 100.*)

(*Register's No. (N. Y. Co.) 216.*)

FORM No. 392

Waiver of Citation — Probate

SURROGATE'S COURT,

County of (*New York.*)

In the Matter of Proving the Last Will
and Testament of

(*WILLIAM WILSON,*)

Deceased,

As a Will of Real and Personal Property.

To the Surrogate's Court of the County of (*New York*):

I, (*EARL WILSON,*) residing at (*52 Main street, City of Yonkers, State of New York,*) the undersigned, (*brother*) and

Waiver of Citation

heir of and next of kin of (*William Wilson*,) deceased, do hereby appear in person and waive the issue and service of a citation in the matter of proving the last will and testament of said deceased bearing date (*November 4, 1914*,) [and consent that such last will and testament bearing date the (*fourth*) day of (*November, 1916*,) be forthwith admitted to probate.]

(*EARL WILSON*.)

Dated, (*Yonkers, N. Y., June 28, 1916*.)

Signed in the presence of

(*MARK CROSBY*.)

STATE OF NEW YORK, }
County of (*Westchester*,) } ss.:

Be it known, that on the (*28th*) day of (*June*,) one thousand nine hundred and (*sixteen*,) before me, (*David Rose*,) a (*Notary Public*) in and for the State of (*New York*,) duly commissioned and sworn, residing in the (*County of Westchester*,) personally came and appeared (*Earl Wilson*,) to me personally known, and known to me to be the same person described in and who executed the above waiver and consent, and (*he*) acknowledged the same to be (*his*) act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal of office, the day and year last above written.

(*DAVID ROSE*,)

Notary Public,

(*Westchester County*.)

[County Clerk's certificate.]

Executor's Oath

FORM No. 393

Executor's Oath*

SURROGATE'S COURT,
County of (*New York.*)

In the Matter of Proving the Last Will and Testament of (<i>AARON AUSTIN,</i>) Deceased, As a Will of Real and Personal Property.	}
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STATE OF NEW YORK, }
County of (*New York*), } ss.:

I, (*GEORGE FREEMONT, one of the*) execut(ors) named in the (*codicil to the*) last will and testament of (*Aaron Austin,*) late of (*572 Fifth avenue, Borough of Manhattan, City of New York, in*) the County of (*New York,*) deceased, do depose and say that I am a resident of No. (*532 Madison avenue, Borough of Manhattan, City and*) State of New York; that I am a citizen of the United States and am over twenty-one years of age, and that I will well, faithfully and honestly discharge the duties of execut(or) of the last will and testament.

(*GEORGE FREEMONT.*)

Sworn to this (*28th*) day }
of (*June, 1916.*) }

(*A. J. BARRETT,*)

Notary Public,

(*New York*) County (*No. 65.*)

*As to when executor may be required to give bond see §§ 2567, 2591, 2605, 2633, 2639 C. C. P.

Designation of Clerk

FORM No. 394

Designation of the Clerk of the Surrogates' Court, as a Person on
Whom Service of Process May Be Made

SURROGATE'S COURT,
County of (*New York*),

In the Matter of Proving the Last Will and Testament of (<i>AARON AUSTIN</i>), Deceased, As a Will of Real and Personal Property.	}
---	---

STATE OF NEW YORK, }
County of (*New York*), } ss.:

I, (*GEORGE FREEMONT*), an execut(or), named in the last will and testament of (*Aaron Austin*), late a resident of (*572 Fifth avenue, Borough of Manhattan, City of New York*, in) the County of (*New York*), deceased, do hereby designate the Clerk of the Surrogate's Court of the County of (*New York*), and his successor in office, as a person on whom service of any process issuing from the Surrogate's Court of the County of (*New York*) may be made, in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used. I am a resident of No. (*532 Madison avenue, Borough of Manhattan, City of New York*.)

(*GEORGE FREEMONT*.)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*28th*) day of (*June*, 1916,) before me personally came (*George Freemont*), to me known to be the individual described in and who executed the foregoing instrument, and (*he*) duly acknowledged to me that (*he*) executed the same.

(*JOHN DOE*),

Notary Public,

(*New York*) County.

Designation of Person to Receive Citation

FORM No. 395

Order Designating Person to Receive Citation

At Chambers of the Surrogate's Court in for the County of (*New York*), at the Surrogate's office in the (*Borough of Manhattan in the City of*) New York, on the (*first*) day of (*September*), in the year nineteen hundred and (*sixteen*.)

PRESENT:

Hon. (*JOHN P. COHALAN*),
Surrogate.

In the Matter of Proving the Last Will and Testament of (<i>HENRY JAMES</i>), Deceased, As a Will of Real and Personal Property.	}
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An application having been made by (*Louise James*), as executrix, etc., to a surrogate of the County of (*New York*), to have a certain paper writing proved as the will of (*Henry James*), late of the County of (*New York*), deceased, and it appearing by (*her*) petition that (*Margaret James and John James, two*) of the persons to be cited, (*are*) infants under the age of fourteen years.

IT IS ORDERED that a copy of the citation herein be also delivered to and left with (*Michael Egan*), Esq., counselor-at-law, of the City of New York, in behalf of said infants at least eight days before the return day of said citation, and that the service of said citation shall not be deemed complete until such delivery.

(*JOHN P. COHALAN*),

Surrogate.

Order for Publication of Citation

FORM No. 396

Order for Publication of Citation

At Chambers of the Surrogate's Court in and for the
County of (*New York*,) at the Hall of Records, in the
County of (*New York*,) on the (*first*) day of (*September*,) in the year nineteen hundred and (*sixteen*,)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*,)

Surrogate.

In the Matter of Proving the Last Will
and Testament of

(*HENRY JAMES*,)

Deceased,

As a Will of Real and Personal Property.

Upon filing the verified petition of (*Louise James, executrix*) named in the last will and testament of (*Henry James*,) late of (*No. 14 West 14th street, Borough of Manhattan, City and State of New York*,) deceased, by which the petitioner has made proof to my satisfaction that the persons whose names and places of residence are hereinafter stated are heirs and next of kin of said (*Henry James*,) deceased, and are not residents of this State, and that personal service of the citation herein cannot with due diligence be made upon (*them*) within the State; and by which said petition the petitioner has also made proof to my satisfaction that there are other heirs and next of kin of said deceased, whose names and places of residence are unknown, and cannot after diligent inquiry be ascertained by (*Louise James*,) the petitioner herein, and also that (*Michael James*) is one of the heirs and next of kin of said deceased, and that if living his place of residence is unknown and cannot after diligent inquiry be ascertained, but if he be dead, his widow, issue, heirs-at-law and next of kin, and successors in interest, whose names and places of residence are unknown and cannot after diligent inquiry be ascertained by (*Louise James*,) the petitioner herein.

NOW, on motion of (*Henry Calder*,) attorney for the said (*Louise James*,) petitioner,

Citation

ORDERED, that the service of the citation in the above-entitled matter upon the persons whose names and places of residence are hereinafter stated and also upon those persons whose names and places of residence are unknown, and cannot after diligent inquiry be ascertained by (*Louise James*,) the petitioner herein, and also upon (*Michael James*,) whose place of residence is unknown, and cannot after diligent inquiry be ascertained by (*Louise James*,) the petitioner herein, be made by publication thereof in (*two*) newspaper(s), to wit, in the (*New York Law Journal and the New York Commercial*,) (*both*) published in the County of (*New York*,) once a week for four successive weeks; or, at the option of the petitioner, by delivering to and leaving with each of them in person, a true copy of the citation without the State, and being satisfied by the said petition that the petitioner cannot with reasonable diligence ascertain a place or places where the said heirs and next of kin whose names or residences are unknown would probably receive matter transmitted through the post-office, hereby dispense with the deposit of any papers therein addressed to them.

AND IT IS FURTHER ORDERED AND DIRECTED, that on or before the day of the first publication, the petitioner deposit in the post-office, at the County of New York, a copy of the citation, contained in a securely closed post-paid wrapper, directed to each of the following persons, respectively, at the place designated below:

(*Albert James, No. 24 State street, Chicago, Illinois;*)

(*Benjamin James, San Diego, California.*)

(*ROBERT LUDLOW FOWLER,*)

Surrogate.

FORM No. 397

Citation on Probate*

The People of the State of New York, by the Grace of God, Free and Independent:

To (*Johann Georg Beiswenger, Anna Maria Frolich, Marie*

* In New York County the original citation must be returned to the Probate Clerk before one o'clock P. M. on the day preceding the return day, with sworn proof of service.

Citation

Katharina Beiswenger, Karoline Hinderer, Christine Hudelmaier, Rosine Hudelmaier, Frank Leberer, Anna Zolski, and Karl Frederick Beiswenger, brother of decedent, if living, and if he be dead, his executors, administrators, widow, issue, heirs-at-law and next-of-kin, whose names and places of residence are unknown and cannot be ascertained; Adolph Bloch and Henry Bloch;) the heirs and next of kin of and (executors named in the will of *Jacob Beiswenger,*) late of the County of (*New York,*) deceased, send greeting:

WHEREAS, (*Sophia Beiswenger,*) who resides at (60 West 72d street, Borough of Manhattan, in) the (*City of New York,*) has lately applied to the Surrogate's Court of our County of (*New York,*) to have a certain instrument(s) in writing, (bearing date the 18th day of March, 1915, and January 10, 1916,) relating to both real and personal property, duly proved as the last will and testament of (*Jacob Beiswenger,*) who was at the time of (*his*) death a resident of (60 West 72d street, Borough of Manhattan, City of New York in) the County of (*New York,*) deceased.

THEREFORE, you and each of you are cited to show cause before the Surrogate's Court of our County of (*New York,*) at (*the Hall of Records,*) in the County of (*New York,*) on the (31st) day of (*July,*) one thousand nine hundred and (*fifteen,*) at half-past ten o'clock in the forenoon of that day, why the said will and testament should not be admitted to probate as a will of real and personal property.

IN TESTIMONY WHEREOF, we have caused the seal
[L. S.] of the Surrogate's Court of the said County of
New York to be hereunto affixed.

WITNESS, Hon. (*Robert Ludlow Fowler,*) a Surrogate of our said County of (*New York,*) at said county, the (18th) day of (*June,*) in the year of our Lord one thousand nine hundred and (*fifteen.*)

(*DANIEL J. DOWDNEY,*)

Clerk of the Surrogate's Court.

[*BENJAMIN L. BLAUVELT,*
Attorney for Petitioner.]

Affidavit of Service

FORM No. 398

Affidavit of Service of Citation*

SURROGATE'S COURT,
County of (*New York*),

In the Matter of Proving the Last Will
and Testament of
(*ELLEN TUCKER*),
Deceased,
As a Will of Real and Personal Property.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*REX HORTON*), of (*New York City*), being duly sworn, says that he is over the age of twenty-one years; that he made personal service of the within citation in the above-entitled special proceeding on the persons named below, whom deponent knew to be the persons mentioned and described in said citation, by delivering to and leaving with each of them personally a true copy of said citation, as follows: On the (29th) day of (*June*, 1916,) at (213 *Fourth avenue, City of New York, their place of residence, on Amos Tucker and Frederick Tucker.*) On the (30th) day of (*June*, 1916,) at (241 *West 40th street, City of New York, their place of residence, on Margaret Morrise and Winifred Morrise.*)

(*REX HORTON.*)

Sworn to before me, this }
(1st) day of (*July*, 1916.) }

(*JOHN DOE*),
Notary Public,
(*N. Y.*) Co.

* If affidavit taken outside this State but within United States certificate of authority of Notary must be attached. See Form, p. 805.

 Affidavit of Service — Adults — Infants — Mailing

FORM No. 399

**Affidavit of Service of Citation Upon Adults, Infants Under and Over
14 and by Mailing**

SURROGATE'S COURT,
County of (*New York*),

In the Matter of Proving the Last Will and Testament of (<i>ANNA HARRIS</i>), Deceased, As a Will of Real and Personal Property.	}
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STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*EUGENE TRUE*), of the Borough of (*The Bronx*), City of (*New York*), being duly sworn, says that he is over the age of (*eighteen*) years; that he made personal service of the within citation in the above-entitled special proceeding on the persons named below, whom deponent knew to be the persons mentioned and described in said citation, by delivering to and leaving with each of them personally a true copy of said citation, as follows: On the (*26th*) day of (*April*, 1916,) at (*245 East 28th St., Borough of Manhattan, City of New York*), on (*Thomas Harris*;) on the (*8th*) day of (*May*, 1916,) at (*299 Broadway, Borough of Manhattan, City of New York*), on (*Matthew Pool*), the person designated to receive citation for (*Sarah Harris*) and (*Joseph Harris*), Infants, under the age of fourteen years; on the (*8th*) day of (*May*, 1916,) at (*176 Broadway, Borough of Manhattan, City of New York*), on (*Title Guarantee and Trust Company*), named in the Will as ("*Title Guarantee & Trust Co.*"), by delivering a copy thereof to (*J. Wray Cleveland, Secretary of said Title Guarantee and Trust Company*) personally and leaving the same with him; that he knew the said (*J. Wray Cleveland*) to be at that time the Secretary of the (*Title Guarantee and Trust Company, of 176 Broadway, Borough of Manhattan, City of New York*), and knew said corporation to be the company mentioned in said citation;

Affidavit of Service — Adults — Infants — Mailing

On the (8th) day of (May, 1916,) at (347 Lenox Avenue, Borough of Manhattan, City of New York,) on (Genevieve Harris) and (Katherine Harris,) Infants, over the age of fourteen years; on (Sarah Harris) and (Joseph Harris,) Infants, under the age of fourteen years; and on (Frances Sand,) the person with whom said (Genevieve Harris, Katherine Harris, Sarah Harris and Joseph Harris) reside;

* That on the (10th) day of (May, 1916,) which was before the first publication of the citation herein, deponent deposited in the General Post Office of the Borough of (Manhattan, City, County) and State of New York, eight sets of copies of the Citation, dated the (25th) day of (April, 1916,) and order for publication thereof, dated the (25th) day of (April, 1916,) in the above-entitled special proceeding, contained in securely closed postpaid wrapper, respectively directed to each of the several persons hereinafter named, at the places and addresses stated below:

(Johann Gaus, at Cedar Bluff, Mississippi;

Anna Ogg, at Neubulach, Oberamt Calw, Empire of Germany;

Marie Gaus, at Wildgarten, Gemeinde, Unterrot, Empire of Germany;

Karoline Bode, at Langert, Gemeinde, Fichtenberg, Oberamt, Gaildorf, Empire of Germany;

Christine Frank, at Haghöfle, Gemeinde, Altersberg, Empire of Germany;

Rosine May, at Waiblingen, Schillerstrasse, Empire of Germany;

Frank Bode, at Aguila P. O., Maricopa County, Arizona;

Anna Catt, at No. 2764 East Eighth Street, East Oakland, California.)

(EUGENE TRUE.)

Sworn to before me this }
(12th) day of (May, 1916.) }

(GEORGE WHITE,)

Notary Public, (New York) County.

*Attach affidavit of publisher showing publication of citation as required by order with copy of published citation attached.

Order for Publication of Citation

FORM No. 400

Order for Publication of Citation

SURROGATE'S COURT,
County of (*Nassau.*)

In the Matter of Proving the Last Will and Testament of (<i>JAKOB BROWNE, also known as Jacob Browne,</i>) Deceased, As a Will of Real and Personal Property.	}
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It appearing to my satisfaction by the Petition of (*Sophia Browne, one of the Executors*) named in the Last Will and Testament of (*Jakob Browne, also known as Jacob Browne,*) late of (*Rockville Centre,*) County of (*Nassau,*) State of New York, deceased, that (*George Browne, Anna Maria Gluck, Marie Browne, Caroline Hower, Christine Miller, Rosine Miller, Frank Leber, Anna Zolke; and Carl Browne, if living, and if he be dead, his executors, administrators, widow, issue, heirs-at-law and next of kin, and successors in interest, whose names and places of residence are unknown and cannot be ascertained;*) of the persons to whom the citation heretofore issued in this matter is directed (*are not residents of this State and that personal service of the citation herein cannot with due diligence be made upon them within the State;*) and that the case is one of those specified in section 2528 of the Code of Civil Procedure and of the act or acts amendatory thereof, I do hereby order the service of said Citation upon said persons to be made by publication of said Citation in (*two*) newspapers designated as follows: (*The Owl and South Side Observer,*) published in the County of (*Nassau,*) once in each of (*four*) successive weeks, which I deem a reasonable time therefor; or at the option of the petitioner by delivering a copy of said Citation without the State to each of the said persons in person; and it further appearing to my satisfaction by the said petition, that the said petitioner cannot with reasonable diligence, ascertain a place or places where the said (*Carl Browne*) would probably receive matter transmitted

Deposition of Subscribing Witness

through the Post Office, I do hereby order that the deposit of any papers therein be dispensed with.

Dated, (*Mineola, N. Y., June 18, 1915.*)

(*JOHN J. GRAHAM,*)

Surrogate.

FORM No. 401

Deposition of Subscribing Witness

SURROGATE'S COURT,

County of (*New York,*)

In the Matter of Proving the Last Will
and Testament of

(*ABEL CROSS,*)

Deceased,

As a Will of Real and Personal Property.

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*JAMES MORELY,*) of (*the Borough of Manhattan, City of New York,*) being duly sworn as a witness in the above-entitled matter, and examined on behalf of the applicant to prove said will, says: I was acquainted with (*Abel Cross,*) late of [address of testator as given in the petition for probate] now deceased. The subscription of the name of said decedent to the instrument now shown to me and offered for probate as and for (*his*) last will and testament, and bearing date the (*23rd*) day of (*June,*) in the year one thousand nine hundred and (*fourteen,*) was made by the decedent at (*the City of New York*) on the (*23rd*) day of (*June*) in the year one thousand nine hundred and (*fourteen,*) in the presence of myself and (*Elizabeth Walker*) the other subscribing witness. At the time of (*his*) making such subscription (*Abel Cross*) the said decedent declared the said instrument so subscribed by (*him*) to be (*his*) last will and testament; and I thereupon signed my name as a witness at the end of said instrument, at the request of said decedent, and in (*his*) presence.

 Notice of — No Objections Filed

The said decedent at the time of so executing said instrument, was upwards of the age of twenty-one years, and in my opinion of sound mind, memory and understanding, not under any restraint or in any respect incompetent to make a will. I also saw said (*Elizabeth Walker*,) the other subscribing witness, sign (*her*) name as witness at the end of said will, and know that (*she*) did so at the request and in the presence of said decedent. I knew said decedent for (*ten*) years before the execution of said instrument.

(*JAMES MORELY*.)

Witness sworn and examined before me }
 this () day of (, 19 .) }

(.....)

(*Assistant to the Surrogate, New York County.*)

 FORM No. 402

Notice of Probate — No Objections Filed

SURROGATE'S COURT,
 County of (*New York*,)

In the Matter of Proving the Last Will and Testament of (<i>HARMON HAYS</i> ,) Deceased.	}
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To the following named persons:

Take notice that the last will and testament of (*Harmon Hays*,) (*late of 91 West 49th Street, Borough of Manhattan, City of New York*,) deceased, has been offered for probate, and that the names and post office addresses of the proponent and of the legatees, devisees and other beneficiaries, as set forth in the petition herein, who have not been cited or have not appeared or waived citation, are as follows: (*Clinton Hays*,) proponent,

Notice of — No Objections Filed

whose post office address is (243 West End Avenue, Borough of Manhattan, City of New York.)

Name of Legatee, Devisee or Beneficiary	Post Office Address
(Emma Hammond).....	(91 West 49th street, New York city.)
(William Jennings).....	(676 Eighth avenue, New York city.)
(Mary Bayer).....	(242 Flushing avenue, Long Island city.)

(HARRY HANSOM,)

Attorney for Petitioner.

Dated, (New York, June 28, 1916.)

Office and Post Office Address,
(60 Wall Street, New York City.)

STATE OF NEW YORK, }
County of (New York), } ss.:

(Arthur Fisher,) being duly sworn, says that he is over the age of twenty-one years; that he deposited in the Post Office of the County of (New York,) a copy of the within notice of probate, contained in (a) securely post paid wrapper(s) directed to each of the persons named in the within notice at the Post Office address therein written opposite to his name, or stated to be his.

(ARTHUR FISHER.)

Sworn to before me this }
(28th) day of (June, 1916.) }

(JOHN DOE,)

Notary Public,
(New York) County.

Affidavit of Comparison

FORM No. 403

Affidavit of Comparison—To Be Attached to Copy of Will Filed
for ProbateSURROGATE'S COURT,
County of (*New York*),

In the Matter of Proving the Last Will and Testament of (<i>MARION MASON</i>), Deceased.	}	
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STATE OF NEW YORK,	}	
County of (<i>New York</i>),	}	ss.:

We, (*Richard Reed*) and (*William Hannon*), being duly and severally sworn, say, each for himself, that he has carefully compared the foregoing paper with the original thereof, dated the (*15th*) day of (*January*, 1910,) about to be filed for probate, and that the same is in all respects a true and correct copy of said instrument and of the whole thereof.

(*RICHARD REED.*)
(*WILLIAM HANNON.*)

Sworn to before me this (<i>16th</i>) day of (<i>September</i> , 1916.)	}	
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(*ANDREW ANDERSON*),

Notary Public,

(*New York*) County, No. (*76*.)

Executor's Renunciation

FORM No. 404

Renunciation of Executor

SURROGATE'S COURT,
County of (*New York*),

In the Matter of Proving the Last Will and Testament of (<i>JAMES J. MILLER, also known as</i> <i>JAMES A. MULLER,</i>) Deceased, As a Will of Real and Personal Property.	}
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I, (*Henry Hendricks*), of (*500 Fifth Avenue, Borough of Manhattan, New York City*), (*one of the*) Executors appointed in and by the Last Will and Testament of (*James J. Miller, also known as James J. Muller*), late of (*No. 100 West 111th Street, Borough of Manhattan, City of New York*) and County of (*New York*), deceased, do hereby renounce said appointment and all rights and claim to letters testamentary of and under said Last Will and Testament, or to act as Executor thereof.

Dated this (*25th*) day of (*July*, 1916.)

(*HENRY HENDRICKS*.)

[In the presence of:*

(*DAVID DOWD*),

(*PETER PAYTON*).]

†(Acknowledgment.)

* May be attested by one or more witnesses.

† It may also be acknowledged or proved and certified. (§ 2628, Code.) It must be proved to the satisfaction of the Surrogate. In Erie County an affidavit of identification, showing acquaintanceship with subscriber, familiarity with his handwriting and a statement that signature is genuine must accompany the renunciation.

Order

FORM No. 405

Order to Open Safe Deposit Box of Decedent and Remove Will*

At a Term of the Surrogate's Court, held in and for the
County of (*New York*), at (*the Hall of Records*),
in said County, on the (*6th*) day of (*July*, 1916.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*),

Surrogate.

In the Matter of the Application
of
(*GEORGE S. RUNYON, JR.*), for an
Order Directed to (*THE YORK-
VILLE BANK*) to Open the Safe
Deposit Box of (*GEORGE S. RUN-
YON*), Deceased.

Upon the annexed petition of (*George Runyon, Jr.*), residing at (*No. 110 West 177th street, in the Borough of Manhattan, City of New York*), verified the (*5th*) day of (*July*, 1916,) (*The Yorkville Bank*), of (*No. 1511 Third Avenue, Borough of Manhattan, City of New York*), is ordered and directed and hereby authorized to allow (*George S. Runyon, Jr., son*) of deceased, and (*his mother, Isabella Runyon, widow*) of decedent, (*Jacob Hoffman and William Hoffman, the executors named in the last will and testament of George S. Runyon*), deceased, in the presence of the (*President, Secretary*) or other officer of said (*bank*), and a representative of the State Comptroller, and, without removing anything therefrom except the last will and testament of said decedent, if any be found, examine the contents of (*safe deposit box No. 60 in its vault*) for such will, and if such will be found, said (*President, Secretary*), or other officer of said bank is hereby authorized and directed to deposit the same in this court.

(*ROBERT LUDLOW FOWLER*),

Surrogate.

* Certified copies of this order must be presented to local transfer tax attorney for State Comptroller and to the proper officer of the institution to which it is directed.

Petition

FORM No. 406

Petition for Order to Open Safe Deposit Box and Remove Will

SURROGATES' COURT,

(New York) County.

In the Matter of the Application
of
(GEORGE S. RUNYON, JR.,) for an
Order Directed to (THE YORK-
VILLE BANK) to Open the Safe
Deposit Box of (GEORGE S. RUN-
YON,) Deceased.

To the Surrogates' Court of (New York) County:

The petition of (George S. Runyon, Jr.,) respectfully shows:

That your petitioner resides at (No. 110 West 177th street, in the Borough of Manhattan, City of New York,) and is (a son, and petitioner's mother, Isabella Runyon, is the widow) of (George S. Runyon,) deceased; that decedent died on the (30th) day of (June, 1916,) at (New Rochelle, Westchester County,) State of New York, and was a resident of (No. 110 West 177th street, Borough of Manhattan, City, County) and State of New York; that decedent at the time of his death rented and held the key to a safe deposit box, (No. 60,) in the vaults of (The Yorkville Bank,) located at (No. 1511 Third avenue, Borough of Manhattan, City of New York.)

That your petitioner is informed and verily believes that the decedent may have left a last will and testament, wherein (Jacob Hoffman and William Hoffman) are or may be named as executors, and that said last will and testament may be deposited in the said safe deposit box of the decedent in the said (The Yorkville Bank,) at (No. 1511 Third avenue, Borough of Manhattan, City of New York.)

WHEREFORE, your petitioner prays that an order be made directed to the officers of (The Yorkville Bank,) permitting the safe deposit box rented by decedent in its vaults to be opened in

Order

the presence of your petitioner and a representative of the State Comptroller, for the purpose of removing any will therein found and transmitting the same to this court.

Dated, (*New York, July 5, 1916.*)

(*GEORGE S. RUNYON, JR.,*)

Petitioner.

(Verification.)

FORM No. 407

Order to Publish Notice to Present Claims

At a Surrogates' Court, held in and for the County of
(*New York,*) on the (*5th*) day of (*January*) in the
year one thousand nine hundred and (*sixteen.*)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER,*)

Surrogate.

In the matter of the Estate
of
(*CHRISTIAN DOHM,*) Deceased.

On application of (*Anton Dohm*) and (*Caroline Dohm*) setting forth that they were appointed the executors of said deceased, and that they are desirous of giving such notice to the creditors of said deceased to present their claims as is authorized by law, and praying that the Surrogate would make an order directing such notice published in such newspapers as he might deem necessary to give notice to said creditors.

IT IS ORDERED, that said executors insert a notice, once in each week for six months, in the (*New York Law Journal*) and also in the (*New York Times*) requiring all persons having claims against said deceased to present the same, with the vouchers thereof, to said executors at a place to be specified in such notice, on or before a day therein mentioned, which shall be at least six months from the day of the first publication of said notice.

(*ROBERT LUDLOW FOWLER,*)

Surrogate.

Notice

FORM No. 408**Notice to Present Claims**

In pursuance of an order of Hon. (*Robert Ludlow Fowler*,)
a Surrogate of the County of (*New York*,)

NOTICE is hereby given to all persons having claims against
(*Christian Dohm*,) late of the County of (*New York*,) deceased,
to present the same with vouchers thereof to the subscribed, at
their place of transacting business, (*No. 99 Nassau street, in the*
City of New York,) on or before the (*15th*) day of (*July*) next.

Dated, (*New York*,) the (*8th*) day of (*January*, 1916.)

(*ANTON DOHM*,)

(*CAROLINE DOHM*,)

Executors.

(*ADOLPH & HENRY BLOCH*,)

Attorneys for Executors,

(*No. 99 Nassau*) Street,

(*New York*,) N. Y.

ADMINISTRATION

While letters will be granted only to persons entitled to share in the personal property who are competent and will accept the same, any person interested in the estate may apply for letters of administration, but certain persons have a prior right over others. Before determining by whom the application should be made and to whom citation must issue, § 2588, Code, and related sections (2564, 2589, 2590, 2592, 2603 and 2606) should be consulted.

If intestate was a subject of a foreign power, the possible right of a consular representative of that power to intervene must be considered and it may be necessary to cite such representative.

The exact name in which decedent kept bank accounts, safe deposit boxes, stock, or registered bonds, should be ascertained before application is made so that the letters when issued may describe the decedent so as to identify him with the person owning the bank accounts, securities or safe deposit box.

If decedent left a safe deposit box, it is advisable to obtain an order to open the box to search for a will before applying for letters. (See Forms 405-6, p. 832 *et seq.*)

The following forms are based upon the assumption that all questions as to who should make the application, what persons interested must be described in the petition and to whom citation should issue, have been accurately determined according to the facts of the case. As to contents of petition, generally, see p. 807, and § 2521, Code.

Printed forms are furnished by the Surrogates' Courts in many of the counties, which are not uniform. The convenience of the practitioner and the court is often served by the following of such forms as an indication of local requirements or custom. In New York County the petition, oath and designation of the Clerk are usually combined in one paper. In Kings County and most of the other counties, the oath accompanies the petition, but the designation and other papers are separate.

Outline of Procedure

Outline of Procedure

1. Ascertain that decedent left no will.

If you have reason to believe there may be a will in decedent's safe deposit box, procure order from Surrogate for opening of box in presence of representative of State Comptroller and filing of will by safe deposit company in Surrogate's Court. (See Forms 405-6, p. 832 *et seq.*)

2. Determine who is entitled to letters and who, if any one, has prior or equal right. If intestate was a subject of a foreign power at the time of his death, notice to the Consul or Consular representative of such foreign power may be necessary.

3. Draw petition for letters,
Oath of administrator,
Designation of clerk as person on whom process may be served (§ 2565, Code),
Renunciations, if any,
Citation, if needed.

4. If citation necessary, draw order that citation to show cause issue to persons entitled to notice.

5. Draw citation addressed to all persons having prior or equal right and have not renounced.

6. File petition for letters, renunciations, designation of clerk, petition and order for service by publication, and have citation signed by clerk. (§ 2590, Code.)

7. Note in diary, return day of citation.

8. Serve citation upon parties who have not renounced and where possible, obtain admission of service duly acknowledged, and proceed with service of citation by mail and publication, if necessary.

9. File citation with complete proof of service, including affidavit of publication, if needed, and any additional renunciations that have been obtained.

In New York County all papers must be filed not later than 1 P. M. on the day preceding the return day.

10. Decision granting letters.

11. Draw decree granting letters.

12. Submit decree (giving notice of settlement, if required).

Petition

13. Decree signed.
14. Arrange with surety company for bond or draw bond, see note, p. 840.
16. File bond and administrators' oath.
17. If no citation issues,
 Arrange with surety company for bond, or draw bond
 (see note, p. 840), and arrange to have sureties attend
 before clerk to execute same.
19. Letters issued.
20. Obtain original letters and a sufficient number of certificates
 that letters have been granted.
21. Apply for order to advertise for creditors. (§ 2677, Code.)
 In New York County the order is made by the Surrogate.
22. Obtain order to advertise for creditors. (§ 2677, Code.)
23. Publish advertisement for creditors in papers designated in
 order, once a week for six months. (§ 2677, Code.)
24. Enter in diary: Last day to present claims.
25. Obtain affidavit of publication of notice to present claims.

FORM No. 409

Petition for Letters of Administration

SURROGATES' COURT,
 County of (*New York.*)

In the Matter of the Application for Letters of Administra- tion on the Goods, Chattels and Credits of (<i>JENNIE BIGLOW,</i>) Deceased.	}	Petition.
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To the Surrogates' Court of the County of (*New York:*)

The petition of (*Helen Meadows,*) residing at (*682 Park avenue, Borough of Manhattan, City of New York,*) in the County of (*New York,*) respectfully shows:

That (*Jennie Biglow,*) the above-named decedent, was at the time of (*her*) death a resident of (*440 West End avenue, City of New York,*) in the County of (*New York,*) and died at (*440*

Petition

West End avenue, Borough of Manhattan, City of New York,) on the (13th) day of (*February*, 1914.)

That your petitioner is of full age and is the (*sister*) of the deceased.

That your petitioner has made diligent search and inquiry for a will of said deceased and has not found any such will, nor has your petitioner obtained any information concerning any such will.

That a search of the records of this court shows that no application has ever been made thereto for letters of administration upon the estate of said deceased, or for the probate of a will of said deceased or for letters testamentary thereupon, and your petitioner is informed and verily believes that no such application has ever been made to the Surrogate's Court of any other county of this State.

That the said deceased died possessed of certain personal property in the County of (*New York*,) State of New York, and that the value of all the personal property, wherever situated, of which the deceased died possessed, does not exceed the sum of (*one thousand* (\$1,000)) dollars.

That the estimated value of the real property in this State, of which said decedent died seized, is (*about five thousand* (\$5,000)) dollars.*

That said deceased left surviving (*no husband*,) and the following only next of kin and heirs-at-law, whose names, degrees of relationship, post-office addresses and ages are as follows:

Name	Relationship	Post office Address	Age
(<i>Helen Meadows</i>).....	(<i>Sister</i>).....	(<i>682 Park avenue</i>).....	(<i>25 yrs.</i>)
(<i>Margaret Meadows</i>).....	(<i>Sister</i>).....	(<i>84 West 91st street</i>).....	(<i>29 yrs.</i>)

That there are no other persons than those mentioned interested in this proceeding.

That all of the above-named persons are of sound mind; and all are of full age.

* In case a cause of action exists in favor of the administrator by special provisions of law, then the following should be inserted: — "that a cause of action exists granted to the administrator of the decedent by special provision of law, the probable amount to be recovered in which cannot be ascertained and that it is impracticable to give a bond sufficient to cover the probable amount to be recovered in said action."

Oath

That said deceased was in her lifetime a citizen of the United States.

YOUR PETITIONER THEREFORE PRAYS that a citation issue herein to all persons entitled thereto citing them to show cause why a decree should not be made awarding letters of administration to your petitioner, [or such other person or persons having a prior right as may be entitled thereto.]

Dated, (*New York, June 28, 1916.*)

(*HELEN MEADOWS,*)
Petitioner.

VERIFICATION

County of (*New York,*) ss.:

(*HELEN MEADOWS,*) the above-named petitioner, being duly sworn, doth depose and say, that (s)he has read the foregoing petition subscribed by and knows the contents thereof, and that the same is true to (*her*) own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters (s)he believes it to be true.

(*HELEN MEADOWS.*)

Subscribed and sworn this }
(28th) day of (*June, 1916.*) }

(*JOHN DOE,*)

Notary Public,
(*N. Y.*) Co.,
No. (124.)

* OATH OF ADMINISTRATOR

County of (*New York,*) ss.:

I, (*HELEN MEADOWS,*) do solemnly swear and declare that (*I*) will well, honestly and faithfully discharge the duties of administra(*trix*) of the goods, chattels and credits of (*Jennie Biglow,*) deceased, according to law.

(*HELEN MEADOWS.*)

Sworn before me this }
(28th) day of (*June, 1916.*) }

(*JOHN DOE,*)

Notary Public,
(*N. Y.*) Co.,
No. (124.)

* As to bond required see § 2591, C. C. P. If not executed by Surety Company, execution on official forms is usually required.

Petition

DESIGNATION OF THE CLERK OF THE SURROGATES' COURT AS A
PERSON ON WHOM SERVICE OF PROCESS MAY BE MADE

I, (*HELEN MEADOWS*), the petitioner herein for letters of administration on the goods, chattels and credits of (*Jennie Biglow*), deceased, a resident of (*New York City*), do hereby designate the Clerk of the Surrogates' Court and his successor in office as a person on whom service of any process issuing from the Surrogates' Court of the County of New York may be made in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used. I reside at No. (682 *Park avenue, Borough of Manhattan, New York City*.)

(*HELEN MEADOWS*.)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (28th) day of (*June*, 1916,) before me personally came (*Helen Meadows*), to me known to be the individual described in and who executed the foregoing instrument, and she acknowledged to me that she executed the same.

(*JOHN DOE*),

Notary Public,

(*N. Y.*) Co.,

No. (124.)

FORM No. 410

Petition for Letters of Administration

SURROGATES' COURT,
County of (*New York*.)

In the Matter
of the
Application for Letters of Administra-
tion on the Goods, Chattels and Credits
of (*JOSEPH A. GUNN*, also known
as *JOSEPH GUNN*), Deceased.

To the Surrogates' Court of the County of (*New York*):

The petition of (*Rudolph Lanton*), residing at (971 *First avenue, Borough of Manhattan, City of New York*), in the County of (*New York*), respectfully shows:

Petition

That (*Joseph Gunn*,) the above-named decedent, was at the time of (*his*) death a resident of (*900 Second avenue, Borough of Manhattan, New York City*,) in the County of (*New York*,) and died at (*302 East 53d street, Borough of Manhattan, City of New York*,) on the (*30th*) day of (*April*, 1916.)

That your petitioner is of full age and is the (*committee of the property of Samuel Gunn, a son*) of the deceased.

That your petitioner has made diligent search and inquiry for a will of said deceased and has not found any such will, nor has your petitioner obtained any information concerning any such will.

That a search of the records of this court shows that no application has ever been made thereto for letters of administration upon the estate of said deceased, or for the probate of a will of said deceased or for letters testamentary thereupon, and your petitioner is informed and verily believes that no such application has ever been made to the Surrogate's Court of any other county of this State.

That the said deceased died possessed of certain personal property in the County and State of New York, and that the value of all the personal property, wherever situated, of which the deceased died possessed, does not exceed the sum of (*two hundred and fifty* (\$250)) dollars.

That the estimated value of the real property in this State, of which said decedent died seized, is (*no*) dollars.

That said deceased left surviving (*a widow*) who resides at (*302 East 53d street, Borough of Manhattan, City of New York*,) and the following only next of kin and heirs-at-law, whose names, degrees of relationship, post-office addresses and ages are as follows:

Name	Relationship	Post-Office Address	Age
(<i>Catherine Gunn</i>).....	(<i>Widow</i>).....	(<i>302 East 53rd street, Borough of Manhattan, City of New York</i>).....	(60)
(<i>Samuel Gunn</i>).....	(<i>Son</i>).....	(<i>Manhattan State Hospital for the Insane, Ward's Island, New York City, whose renunciation is filed herewith</i>).....	(25)
(<i>Bertha Gunn</i>).....	(<i>Daughter</i>).....	(<i>London, England</i>).....	(23)
(<i>Bayard Gunn</i>).....	(<i>Son</i>).....	(<i>302 East 53rd street, Borough of Manhattan, City of New York</i>).....	(19)

That there are no other persons than those mentioned interested in this proceeding.

Petition for Limited Letters

That all of the above-named persons are of sound mind; and all of full age except (*Samuel Gunn, who was adjudicated incompetent and duly committed to the Manhattan State Hospital for the Insane and of whom Rudolph Lanton, the petitioner herein, has heretofore been appointed committee of the property of said incompetent by an order of the Supreme court, dated and entered in the office of the Clerk of the County of New York on May 15, 1900,*) and

(*Bayard Gunn, an infant over 14, who resides with his mother Catherine Gunn at 302 East 53d street, Borough of Manhattan, City of New York, of whom no testamentary or general guardian has been appointed.*)

That said deceased was in (*his*) lifetime a citizen of the United States.

YOUR PETITIONER THEREFORE PRAYS, that a citation issue herein to all persons entitled thereto citing them to show cause why a decree should not be made awarding letters of administration to your petitioner.

Dated, (*New York, May 6, 1916.*)

(*RUDOLPH LANTON,*)

Petitioner.

[Verification; * Oath of Administrator; Designation of Clerk.]

FORM No. 411

Petition for Limited Letters of Administration

SURROGATES' COURT,
County of (*New York.*)

In the Matter
of the
Application for Letters of Administra-
tion on the Goods, Chattels and Credits
of (*Domenico Donati, also known as
Dominic Donati,*) Deceased.

To the Surrogates' Court of the County of (*New York*):

The petition of (*Luigi Donati*) of (*316 East 110th street, Borough of Manhattan, City of New York,*) in the County of (*New York,*) respectfully shows:

* As to bond see § 2591, C. C. P.

Petition for Limited Letters

That (*Domenico Donati, also known as Dominic Donati,*) the above-named decedent, was at the time of (*his*) death a resident of (*316 East 110th street, Borough of Manhattan, City of New York,*) in the County of (*New York,*) and died at (*Fordham Hospital, City of New York,*) on the (*17th*) day of (*July, 1916.*)

That your petitioner is of full age and is the (*brother*) of the deceased.

That your petitioner has made diligent search and inquiry for a will of said deceased and has not found any such will, nor has your petitioner obtained any information concerning any such will.

That a search of the records of this court shows that no application has ever been made thereto for letters of administration upon the estate of said deceased, or for the probate of a will of said deceased or for letters testamentary thereupon, and your petitioner is informed and verily believes that no such application has ever been made to the Surrogate's Court of any other county of this State.

That the said deceased died possessed of no personal property in the County of (*New York*) and State of New York, and that the value of all the personal property, wherever situated, of which the deceased died possessed, does not exceed the sum of (*no*) dollars.

That the estimated value of the real property in this State, of which said decedent died seized, is (*no*) dollars.

That a right of action exists granted to the administrator of the decedent by special provision of law, the probable amount to be recovered in which cannot be ascertained and that it is impracticable to give a bond sufficient to cover the probable amount to be recovered in said action.

That said deceased left surviving (*no widow,*) and the following only next of kin and heirs-at-law, whose names, degrees of relationship, post-office addresses and ages are as follows:

Name	Relationship	Post-Office Address	Age
(<i>Guiseppe Donati</i>).....	(<i>Father</i>).....	(<i>Naples, Italy</i>).....	(<i>Unknown</i>)
(<i>Ricardo Donati</i>).....	(<i>Brother</i>).....	(<i>Buffalo, N. Y.</i>).....	(<i>40</i>)
(<i>Luigi Donati</i>).....	(<i>Brother</i>).....	(<i>316 East 110th street, Borough of Manhattan, N. Y. city</i>).....	(<i>32</i>)

That there are no other persons than those mentioned interested in this proceeding (*except the Consul-General of the Kingdom of Italy at the City of New York.*)

Renunciation

That all of the above-named persons are of sound mind; and all are of full age.

That said deceased was in his lifetime a (*subject of the Kingdom of Italy.*)

YOUR PETITIONER THEREFORE PRAYS that a citation to show cause issue to all persons having the right to show cause why a decree should not be made awarding limited letters of administration to your petitioner.

Dated, (*New York, August 15, 1916.*)

(*LUIGI DONATI,*)

Petitioner.

[Verification; * Oath of Administrator; Designation of Clerk.]

FORM No. 412

Renunciation

SURROGATES' COURT,

County of (*New York.*)

In the Matter
of the
Application for Letters of Administration
on the Estate of (*JOSEPH A.
GUNN, also known as JOSEPH
GUNN,*) Deceased.

I, (*CATHERINE GUNN, residing at 302 East 53d street, Borough of Manhattan, City of New York,*) in the County of (*New York, widow*) of (*Joseph A. Gunn, also known as Joseph Gunn,*) deceased, do hereby renounce all right to letters of administration on the estate of said deceased.

(*CATHERINE GUNN.*)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*6th*) day of (*May, 1916,*) before me came (*Catherine Gunn,*) to me known to be the individual described in and who executed the within renunciation, and acknowledged that (*she*) executed the same.

(*ROLAND REED,*)

Notary Public,

(*N. Y.*) Co., No. (*76.*)

*As to bond see § 2592, C. C. P.

Designation of Clerk

FORM No. 413

Designation of the Clerk of the Surrogates' Court, as a Person on
Whom Service of Process may be Made

(KINGS) COUNTY SURROGATE'S COURT.

In the Matter
of the
Petition of (CHARLES FENTON) for
Letters of Administration of the
Goods, Chattels and Credits Which
Were of (FANNIE FENTON,)
Deceased.

I, (CHARLES FENTON,) about to be appointed the ad-
ministrat(or) in this proceeding, residing at (No. 24 Beverly
road, Borough of Brooklyn, City of New York,) do hereby
designate the Clerk of the Surrogate's Court of the County of
(Kings,) and his successor in office as a person on whom serv-
ice of any process issuing from said court in this proceeding or
in any other proceeding which shall affect the estate of the
said (Fannie Fenton,) deceased, may be made in like manner
and with like effect as if it were served personally upon me, when-
ever I cannot be found and served within the State of New York
after due diligence used.

(CHARLES FENTON.)

STATE OF NEW YORK, }
County of (Kings,) } ss.:

On this (5th) day of (September, 1916,) before me personally
came (Charles Fenton,) to me known and known to me to be the
individual described in and who executed the foregoing instru-
ment and he acknowledged to me that he executed the same.

(DAISY DARLING,)

Notary Public,
(Kings) County.

Order That Citation Issue

FORM No. 414

Order that Citation Issue —Administration

At a Surrogate's Court, held in and for the County of
(*New York*,) at (*the Hall of Records, Borough of*
Manhattan, City of New York,) on the (22*d*) day of
(*January*, 1916.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*,)

Surrogate.

In the Matter of the Application for Letters of Administra- tion on the Goods, Chattels and Credits of (<i>MICHAEL GANNON</i> ,) Deceased.
--

On reading and filing the petition of (*Mary Gannon*,) the petitioner herein, praying that a citation to show cause issue, directed to (*Charles Gannon and Anna Gannon*,) to show cause why letters of administration on the goods, chattels and credits of the said (*Michael Gannon*,) deceased, should not issue to (*her*,) and that a decree of the said Surrogates' Court of the County of (*New York*) issue appointing the petitioner administratrix of the goods, chattels and credits of the said deceased, and by which petition it appears that the said (*Charles Gannon and Anna Gannon*) are parties in interest.

NOW, on motion of (*Henry Turner*,) attorney for the petitioner herein, it is

ORDERED, that a citation to show cause be issued, directed to (*Charles Gannon and Anna Gannon*,) to show cause why letters of administration on the goods, chattels and credits of the said deceased should not be issued to the petitioner, and that a decree of the said Surrogates' Court of the County of (*New York*) issue appointing the petitioner administratrix of the goods, chattels and credits of the said deceased.

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

Citation

FORM No. 415

Citation

The People of the State of New York by the Grace of God Free and Independent:

To (*Henry Salve, Albert Moss, William Lang and George Rose,*) send greeting:

Upon the petition of (*Mary Salve,*) who resides at (*No. 20 West 93d street, Borough of Manhattan, City and*) State of New York, you and each of you are hereby cited to show cause before the Surrogates' Court of (*New York*) County, held at the (*Hall of Records in the*) County of (*New York*) on the (*20th*) day of (*September, 1916,*) at half-past ten o'clock in the forenoon of that day, why a decree should not be made awarding letters of administration of the goods, chattels and credits which were of (*Robert Salve,*) late of (*No. 20 West 93d*) street, (*Borough of Manhattan, City, County*) and State of New York, deceased;

IN TESTIMONY WHEREOF, we have caused the seal of the Surrogates' Court of the said County of (*New York*) to be hereunto affixed.

[L. S.] Witness, Hon. (*Robert Ludlow Fowler,*) a Surrogate of our said County, at the County of (*New York,*) the (*first*) day of (*September,*) in the year of our Lord one thousand nine hundred and (*sixteen.*)

(*DANIEL J. DOWDNEY,*)

Clerk of the Surrogates' Court.

[Affidavit of Service.]

 Making Limited Letters Complete

FORM No. 416**Petition to Have Limited Letters Made Full and Complete**

[Court and Title of Proceeding.]

To the Surrogate Court,.....County.

Your Petitioner respectfully shows to the court

First: That limited letters of administration upon the goods, chattels and credits of.....deceased, who at the time of his death resided at....., were duly issued to your Petitioner by the Surrogate of the County of....., on the.....day of....., 191...., with power to prosecute only and not with power to collect and compromise.

Second: That the above named decedent came to his death as the result of injuries sustained by him

[State facts showing cause of death through negligence.]
and that your Petitioner, as Administrator commenced an action in the.....Court against....., as defendant, to recover damages causing the death of the above named decedent through negligence.

Third: That said action is now at issue and negotiations have been conducted through the attorney for the defendant in said action and the attorney for your Petitioner for a compromise and settlement, and said negotiations have resulted in final offer made on behalf of....., defendant, for the payment of the sum of.....Dollars, to be in full settlement and discharge of said claim and cost of action.

Fourth: That your Petitioner is familiar with the facts and circumstances connected with the accident which resulted in decedent's death, and with the investigation which has been made by his attorney with respect thereto and has been fully advised by his attorney as to the progress of the negotiations for a settlement, and your Petitioner verily believes that it would be to the best interests of the next of kin left by said decedent to accept said offer of settlement and compromise for the reason that

[State facts showing why compromise should be accepted.]

WHEREFORE, your Petitioner prays that said limited letters of Administration heretofore granted to your Petitioner should be made full and complete and that the proposed compromise and settlement be approved and authorized by this Court.

(Verification.)

Decree Making Limited Letters Full and Complete

FORM No. 417

Decree Making Limited Letters of Administration Full and Complete

At Chambers of the Surrogates' Court, held in and for the County of (*New York*,) at the (*Hall of Records*) in the County of (*New York*) on the (*1st*) day of (*September*,) in the year nineteen hundred and (*sixteen*.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*,)

Surrogate.

In the Matter of the Application for Letters of Administra- tion on the Goods, Chattels and Credits of (<i>HENRY JAMES</i> ,) Deceased.
--

On reading and filing the petition of (*John James*,) duly verified the (*25th*) day of (*August*, 1916,) and the affidavit of (*Eugene Lamb*,) his attorney, duly verified the (*26th*) day of (*August*, 1916,) hereto annexed, and it appearing thereby that application is made for an order making the limited letters of administration heretofore granted to the petitioner herein, full and complete and authorizing him to compromise the cause of action referred to in said petition;

NOW, on motion of (*Eugene Lamb*,) attorney for said petitioner, it is

ORDERED, ADJUDGED AND DECREED, that upon giving the bond and the removal of the restrictions as hereinafter provided for, on the limited letters of administration upon the goods, chattels and credits of (*Henry James*,) deceased, heretofore granted to the said (*John James*,) petitioner herein, on the (*10th*) day of (*June*, 1916,) with power to prosecute only and not with power to collect or compromise, be and the same hereby are made full and complete upon his executing a bond, according to law with sufficient sureties, in the penal sum of (*seventeen hundred*) dollars (\$1,700.00;) and it is further

ORDERED, ADJUDGED AND DECREED, that said administrator be and he hereby is authorized and empowered to

Petition

compound, compromise and settle the claim and cause of action against (*Solomon Reiss*) for personal injuries resulting in the death of the decedent, referred to in the annexed petition and affidavit, for the sum of (*seventeen hundred dollars*) (\$1,700.00), and upon receipt of said sum, to execute, acknowledge and deliver a release and discharge thereof.

(*ROBERT LUDLOW FOWLER,*)

Surrogate.

FORM No. 418

Petition for Letters of Administration With Will Annexed

SURROGATES' COURT,

(*New York*) County.

In the Matter of Administration, with
the Will Annexed, of the Goods, Chat-
tels and Credits left Unadministered
of

(*HELEN PAGE,*)

Deceased.

To the Surrogates' Court of the County of (*New York*):

The Petition of (*Jeanette Evans,*) named in the will as ("*Jeane Evans*",) respectfully shows:

That your petitioner is a resident of (*Van Nest, Westchester County,*) in the State of New York, and is one of the residuary legatees named in the Last Will and Testament of (*Helen Page,*) deceased; that said (*Helen Page,*) deceased, departed this life at No. (*589 Madison Avenue,*) Borough of (*Manhattan, City, County and*) State of New York, on the (*10th*) day of (*October, 1915,*) leaving a Last Will and Testament (*and Codicil thereto,*) in and by which she appointed (*Frank Woolsey,*) of (*the City of Paterson, State of New Jersey,*) as Executor thereof in the place and stead of (*James Thomas,*) deceased; that the said Last Will and Testament was duly admitted to probate by (*Robert Ludlow Fowler, one of*) the Surrogates of the County of (*New York,*) on the (*19th*) day of (*February, 1916.*)

Petition

And your petitioner further shows that the said (*Frank Woolsey*,) the Executor named in said Will (*and Codicil thereto*,) filed a renunciation of Letters Testamentary with this Court, verified the (24th) day of (*October*, 1915,) leaving certain property and assets of the said Testatrix unadministered; that your petitioner has to the best of her ability estimated and ascertained the value of the personal estate of which the said Testatrix died possessed and of the real estate so possessed and of the proceeds thereof which may come to the hands of an administrator by reason of the provisions of said Last Will and Testament, and that the same will not exceed the sum of (*Ninety Thousand* (\$90,000)) Dollars, according to the best of your petitioner's information and belief.

That the residuary legatees named in said will are as follows:

(*Jeanette Evans*,) named in the Will as ("*Jeane Evans*",) your Petitioner and (*niece*) of decedent, residing at (*Van Nest, New York*;)

(*Hazel Wood, niece*) of decedent, residing at (*No. 589 Madison Avenue, Borough of Manhattan, City, County and State of New York*;)

(*Ellen N. Tepley*,) variously name in the Will as ("*Nellie N. Tepley*" and "*Ellen N. Tepley*") *grand-niece, residing at No. 1520 Washington Avenue, Borough of Bronx, City, County and State of New York*;)

(*Charles Page Seymour, grand-nephew, residing at No. 1520 Washington Avenue, Borough of Bronx, City, County and State of New York*;)

(*That the said Ellen N. Tepley and Charles Page Seymour are also two of the life tenants under said Will.*)

That your petitioner has been informed and verily believes that said deceased left her surviving:

(*Ira T. Wood, brother, residing at No. 589 Madison Avenue, Borough of Manhattan, City, County and State of New York*;)

(*Ellen N. Tepley, variously named in the Will as "Nellie N. Tepley" and "Ellen N. Tepley," grand-niece, residing at No. 1520 Washington Avenue, Borough of Bronx, City, County and State of New York*;)

(*Charles Page Seymour, grand-nephew, residing at No. 1520 Washington Avenue, Borough of Bronx, City, County and State of New York*;) only next of kin; that the said deceased was

Petition

a citizen of the United States and was at or immediately previous to her death a resident of the County of (*New York*.)

Your petitioner, therefore, prays that a citation to show cause be issued, directed to (*Ellen N. Tepley, Charles Page Seymour and Hazel Wood*,) to show cause why Letters of Administration with the Will annexed, of the goods, chattels and credits of the said deceased should not be issued to your petitioner, and that a decree of said Surrogates' Court of the County of (*New York*) issue, appointing your petitioner Administratrix with the Will annexed of the goods, chattels and credits of said deceased.

(*JEANETTE EVANS*),

Petitioner.

STATE OF NEW YORK, }
County of (*Bronx*), } ss.:

(*JEANETTE EVANS*), the above-named Petitioner, being duly sworn, deposes and says: That she has read the foregoing Petition subscribed by her and knows the contents thereof, and that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.

(*JEANETTE EVANS*.)

Subscribed and sworn this }
(21st) day of (*February*, 1916.) }

(*HARRY ROSS*),

Notary Public,

(*Bronx*) County. No. (8.)

STATE OF NEW YORK, }
County of (*Bronx*), } ss.:

* I, (*JEANETTE EVANS*), do solemnly swear and declare, that I will well, honestly, and faithfully discharge the duties of administratrix with the will annexed, of the goods, chattels and credits of (*HELEN PAGE*), deceased, according to law.

(*JEANETTE EVANS*.)

Sworn to before me this }
(21st) day of (*February*, 1916.) }

(*HARRY ROSS*),

Notary Public, (*Bronx*) County. No. (8.)

* As to bond see §§ 2591, 2605, C. C. P.

FORM No. 419

Decree Granting Letters of Administration With Will Annexed

At Chambers of the Surrogates' Court, held in and for
the County of (*New York*,) at the (*Hall of Records*)
in the County of (*New York*) on the (*15th*) day of
(*March*, 1916.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*,)

Surrogate.

In the Matter of the Application for
Letters of Administration, with the
Will Annexed, of the Goods, Chattels
and Credits of

(*HELEN PAGE*,)

Deceased.

On reading and filing the petition of (*Jeanette Evans*,) verified the (*21st*) day of (*February*, 1916,) the order herein that citation issue, the citation requiring all persons entitled to notice of this proceeding to be and appear before (*one of*) the Surrogates of the County of (*New York*) on the (*11th*) day of (*March*, 1916,) to show cause why the petition of said (*Jeanette Evans*) for the administration of letters c. t. a., should not be granted upon the Last Will and Testament of (*Helen Page*,) deceased, admitted to probate by Hon. (*Robert Ludlow Fowler*, *one of*) the Surrogates of the County of (*New York*,) by decree dated the (*19th*) day of (*February*, 1916,) said citation bearing date the (*26th*) day of (*February*, 1916,) with due proof of service thereof on (*Ellen N. Tepley*, *Charles Page Seymour*, and *Hazel Wood*,) verified the (*10th*) day of (*March*, 1916,) the affidavits of (*Ira T. Wood*) verified the (*10th*) day of (*March*, 1916,) and of (*Bernard Bixby*,) verified the (*11th*) day of (*March*, 1916,) thereto annexed, and the renunciation of (*Hazel Wood*,) and the petitioner, (*Jeanette Evans*,) having appeared on the return day of said citation by (*Dolby & Benton*,) her attorneys, and (*Hazel Wood by her attorneys*, *Dolby & Benton*, and *Ellen N. Tepley and Charles Page Seymour*) having appeared by their attorneys, (*Greene and Mayer*,) and that matter having been

Administrator's Oath

referred to me; and after hearing (*Bernard Bixby*,) of counsel in support of the motion, and (*Henry Mayer*,) of counsel on behalf of (*Ellen N. Tepley and Charles Page Seymour*,) in opposition thereto;

NOW, on motion of (*Dolby v. Benton*,) attorneys for the petitioner, it is

ORDERED, ADJUDGED AND DECREED, that the petition of (*Jeanette Evans*) praying that a decree appointing her Administratrix with the Will annexed of the goods, chattels and credits of (*Helen Page*,) deceased, be granted; and it is further

ORDERED, ADJUDGED AND DECREED, that letters of administration with the Will annexed of the goods, chattels and credits of said (*Helen Page*,) deceased, issue to the said (*Jeanette Evans, of Van Nest, Westchester County, New York*,) and (*American Trust Company of No. 19 Broadway, Borough of Manhattan, City, County and State of New York*,) and it is further

ORDERED, ADJUDGED AND DECREED, that letters of administration with the Will annexed, etc., issue to the said (*Jeanette Evans*,) upon her filing a bond in the sum of One Hundred Thousand (\$100,000) Dollars and to (*American Trust Company*,) without its filing any bond.

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

FORM No. 420

Oath of Administrator With Will Annexed by Corporation

SURROGATES' COURT,
(*New York*) County.

In the Matter of the Application for
Letters of Administration, with the
Will Annexed, of the Goods, Chattels
and Credits left Unadministered of
(*HELEN PAGE*,)
Deceased.

(*AMERICAN TRUST COMPANY*,) of (19 Broadway, Borough of Manhattan, City, County and) State of New York, does

Administrator's Oath — By Corporation

hereby consent to act as (*Administrator with the Will annexed of the goods,*) chattels and credits (*left unadministered of Helen Page,*) late of (*No. 589 Madison Avenue, Borough of Manhattan, City, County*) and State of New York, and agree that it will well, faithfully and honestly discharge the duties of Administrator c. t. a. of the said Last Will and Testament.

(*AMERICAN TRUST COMPANY,*)

By (*Samuel A. Watson,*)

(*Vice-President.*)

Attest:

(*Amos Whitney,*)

(*Ass't Secretary.*)

(Corp. Seal.)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (18th) day of (*March, 1916,*) before me personally came (*Samuel A. Watson,*) to me known, who, being by me duly sworn, did depose and say: That he resides in the Borough of (*Manhattan, City, County and State of New York;*) that he is (*Vice-President of American Trust Company,*) the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of the said corporation, and that he signed his name thereto by like order.

(*HENRY REDFIELD,*)

Notary Public,

(*New York*) County.

Order That Citation Issue

FORM No. 421

Order that Citation Issue

At a Surrogates' Court, held in and for the County of
(*New York*,) at the (*Hall of Records*,) Borough of
(*Manhattan*,) City of (*New York*,) on the (22nd)
day of (*February*, 1916.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*,)

Surrogate.

In the Matter of the Application for
Letters of Administration, with the
Will Annexed, of the Goods, Chattels
and Credits left Unadministered of

(*HELEN PAGE*,)

Deceased.

On reading and filing the petition of (*Jeanette Evans*,) the
Petitioner herein, praying that a citation to show cause issue,
directed to (*Ellen N. Tepley, Charles Page Seymour and Hazel
Wood*,) to show cause why Letters of Administration with the
Will annexed of the goods, chattels and credits of the said (*Helen
Page*,) deceased, should not be issued to her, and that a decree
of said Surrogates' Court, of the County of (*New York*,) issue
appointing the petitioner Administratrix with the Will annexed
of the goods, chattels and credits of the said deceased, and by
which petition it appears that the said (*Ellen N. Tepley, Charles
Page Seymour and Hazel Wood*) are parties in interest,

NOW, on motion of (*Dolby & Benton*,) attorneys for the
petitioner herein, it is

ORDERED, that a citation to show cause be issued, directed
to (*Ellen N. Tepley, Charles Page Seymour and Hazel Wood*)
to show cause why Letters of Administration with the Will
annexed of the goods, chattels and credits of the said deceased,
should not be issued to the petitioner, and that a decree of the
said Surrogates' Court of the County of (*New York*,) issue
appointing the petitioner Administratrix with the Will annexed
of the goods, chattels and credits of the said deceased.

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

Citation

FORM No. 422

Citation—Administration c. t. a.

THE PEOPLE OF THE STATE OF NEW YORK, BY THE
GRACE OF GOD, FREE AND INDEPENDENT,

To (*Ellen N. Tepley, Charles Page Seymour and Hazel Wood,*)
send Greeting:

Upon the petition of (*Jeanette Evans,*) who resides at (*Van Nest, Westchester County,*) State of New York;

You and each of you are hereby cited to show cause before our Surrogate of the County of (*New York,*) at the Surrogates' Court of said County, held at the (*Hall of Records*) in the County of (*New York*) on the (*11th*) day of (*March, 1916,*) at (*half past ten*) o'clock in the forenoon of that day, why the Petition of the said (*Jeanette Evans*) for the issuance of Letters of Administration c. t. a., should not be granted upon the Last Will and Testament of (*Helen Page,*) deceased, admitted to probate by (*one of*) the Surrogates of the County of (*New York*) on the (*19th*) day of (*February, 1916.*)

IN TESTIMONY WHEREOF, We have caused the
Seal of the Surrogates' Court of the said County of
(*New York*) to be hereunto affixed.

Witness, Honorable (*ROBERT LUDLOW FOWLER,*)
a Surrogate of our said County, at the County of
[L. s.] (*New York,*) the (*26th*) day of (*February*) in the
year of our Lord one thousand nine hundred and
(*sixteen.*)

(*DANIEL J. DOWDNEY,*)

Clerk of the Surrogates' Court.

GENERAL GUARDIAN

The best interests of the infant will be the Court's guide as to who shall be appointed guardian. (92 *Misc.* 89.)

Property acquired should be taken in the name of the ward. See generally 93 *Misc.* 299.

The application must be made:

If infant over 14 years, by infant.

If infant under 14 years, by any one on its behalf.

As to contents of petition, see § 2646, Code.

As to who should be cited, see § 2647, Code; 56 *Misc.* 417.

In several counties forms for appointment of general guardians are provided by the Surrogate's Court. These are not uniform in style or grouping of papers. In New York County, the petition, oath of guardian, designation of the Clerk as a person upon whom service may be made, and any waivers of citations are usually combined in one paper. In Kings and Bronx Counties the petition and oath are combined, and the designation of the Clerk and waivers are separate papers. The convenience of both practitioner and the Court is served by making use of such forms as an indication of local requirements and customs.

The following forms are to be adapted to local rules and requirements:

FORM No. 423

Petition for Letters of Guardianship—Infant Under 14

SURROGATES' COURT,

County of (*New York.*)

In the Matter of the Application for the Appointment of a General Guardian of the Person and Estate of (<i>SAMUEL THORN,</i>) An Infant under Fourteen years of age.	}
--	---

To the Surrogates' Court of the County of (*New York:*)

THE PETITION of (*Bernard Thorn,*) of the County of (*New York,*) and residing at (*No. 638 West 160th Street, Borough of Manhattan, New York City,*) respectfully sheweth:

That your Petitioner is (*the father*) of (*Samuel Thorn,*) an Infant.

Petition — Infant Under 14

That said Infant is a resident of the County of (*New York*), and is under fourteen years of age, and was (*seven*) years of age on the (*14th*) day of (*October*) last past, having been born on the (*14th*) day of (*October*, 1907,) and resides with (*petitioner*) at (*638 West 160th Street, Borough of Manhattan, New York City.*)

That (*Bernard Thorn*,) the Father of said Infant, is living, and resides at (*638 West 160th Street, Borough of Manhattan, New York City.*)

That (*Julia Thorn*,) the Mother of said Infant, is (*not living, having died at the City of New York, on the 14th day of December, 1914.*)

That the names and post-office addresses of the nearest next-of-kin of full age residing in the County of (*New York*.) so far as they can be ascertained with due diligence, are as follows:

Name	Relationship	Post-Office Address
Bernard Thorn.....	Father.....	638 West 160th Street, Borough of Manhattan, New York City.

That there are no other persons than those above mentioned interested in this proceeding.

That said Infant is entitled to certain property and estate, and that to protect and preserve the legal rights of said Infant it is necessary that some proper person should be duly appointed the guardian of (*his*) person and estate. Said Infant has now no General or Testamentary Guardian appointed by will or deed, or an acting Guardian in socage or a Guardian of the Person appointed pursuant to Section 86 of the Domestic Relations Law, to the knowledge or belief of your petitioner.

That the estimated value of the personal property to which the Infant is or will be entitled is (*Two Thousand (\$2,000)*) dollars; that the annual income from all other personal property to which the Infant is or will be entitled is (*Five Hundred (\$500)*) Dollars; and that the annual rents of the real estate to which the Infant is or will be entitled to, do not exceed the sum of (*One Thousand (\$1,000)*) Dollars, or thereabouts.

WHEREFORE YOUR PETITIONER PRAYS: That a decree issue appointing (*Bernard Thorn*,) the Guardian of the

Petition — Infant Under 14

person and estate of said Infant during (*his*) infancy. And your Petitioner will ever pray.

Dated, (*New York*, 2nd) day of (*March*, 1915.)

(*BERNARD THORN*,)

Petitioner.

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*BERNARD THORN*,) the foregoing named Petitioner, being duly sworn, doth depose and say, that (*he*) has read the foregoing Petition subscribed by (*him*) and knows the contents thereof, and that the same is true to (*his*) own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters (*he*) believes it to be true.

(*BERNARD THORN*,)

Subscribed and sworn to before me this }
(2nd) day of (*March*, 1915.) }

(*MARION DEMPSY*,)

Notary Public,

(*New York*) County.

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

I, (*BERNARD THORN*,) do solemnly swear and declare that (*I*) will well, honestly and faithfully discharge the duties of Guardian of the person and estate of (*Samuel Thorn*,) Infant, according to law.

(*BERNARD THORN*,)

Sworn to before me this }
(2nd) day of (*March*, 1915.) }

(*MARION DEMPSY*,)

Notary Public,

(*New York*) County.

I, (*BERNARD THORN*,) the proposed Guardian named herein of the person and estate of (*Samuel Thorn*,) an Infant, do hereby designate the Clerk of the Surrogates' Court of the County of (*New York*,) and his successors in office, as a person on whom service of any process issuing from the Surrogates'

Petition — Infant Over 14

Court of the County of (*New York*) may be made, in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used. I am a resident of No. (638 West 160th Street, Borough of Manhattan, New York City.)

(*BERNARD THORN.*)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this (2nd) day of (*March*, 1916,) before me personally came (*Bernard Thorn*,) to me known to be the individual described in and who executed the foregoing instrument, and (*he*) duly acknowledged to me that he executed the same.

(*MARION DEMPSY*,)

Notary Public,

(*New York*) County.

FORM No. 424

Petition for Appointment of General Guardian — Infant Over 14

SURROGATES' COURT,

County of (*New York*.)

In the Matter of the Application for the
Appointment of a General Guardian
of the Person and Estate of

(*REBECCA GREEN*,)

An Infant Over Fourteen Years of Age.

To the Surrogates' Court of the County of (*New York*:)

THE PETITION of (*Rebecca Green*,) residing at (*No. 1415 Madison Avenue, in the Borough of Manhattan, City and*) State of New York, respectfully sheweth:

That your Petitioner is a resident of the County of (*New York*,) an Infant over fourteen years of age and was born on the (27th) day of (*June*, 1895,) and resides with (*Mathilda Green, her Mother*,) at (*1415 Madison Avenue, Borough of Manhattan, New York City*.)

That (*Benjamin Green*,) your Petitioner's Father, is (*not*

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living, having died at the City of New York on the 1st day of January, 1915.)

That (*Mathilda Green*,) your Petitioner's Mother, is living, and resides at (*1415 Madison Avenue, Borough of Manhattan, New York City*.)

That the names and post-office addresses of the nearest next-of-kin of full age residing in the County of (*New York*,) so far as they can be ascertained with due diligence, are as follows:

Name	Relationship	Post-Office Address
(<i>Mathilda Green</i>)	(<i>Mother</i>)	(<i>1415 Madison Avenue, Borough of Manhattan, New York City.</i>)
(<i>Margaret L. Green</i>)	(<i>Sister</i>)	(<i>1415 Madison Avenue, Borough of Manhattan, New York City.</i>)

That there are no other persons than those above mentioned interested in this proceeding.

That your Petitioner is entitled to certain property and estate, and that to protect and preserve the legal rights of your Petitioner it is necessary that some proper person should be duly appointed the guardian of (*her*) person and estate. Your Petitioner has now no General or Testamentary Guardian appointed by will or deed, or an acting Guardian in socage or a Guardian of the Person appointed pursuant to Section 86 of the Domestic Relations Law, to the knowledge or belief of your Petitioner.

That the estimated value of the personal property to which the Infant is or will be entitled is (*Five Thousand (\$5,000)*) Dollars; that the annual income from all other personal property, the principal of which will not come to the hands of the Guardian to which the Infant is or will be entitled is (*Three Hundred (\$300)*) Dollars; and that the annual rents of the real estate to which the Infant is or will be entitled to, do not exceed the sum of (*Five Hundred (\$500)*) Dollars, or thereabouts.

WHEREFORE YOUR PETITIONER PRAYS: That a decree issue appointing (*her sister, Margaret L. Green*,) residing at (*1415 Madison Avenue, Borough of Manhattan, New York City*,) General Guardian of (*her*) person and estate. And your Petitioner will ever pray.

Dated, New York, (*12th*) day of (*March, 1916.*)

(*REBECCA GREEN*,)

Petitioner.

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

(*REBECCA GREEN*,) the foregoing named Petitioner, being duly sworn, doth depose and say, that (*she*) has read the foregoing Petition subscribed by (*her*) and knows the contents thereof, and that the same is true to (*her*) own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters (*she*) believes it to be true.

(*REBECCA GREEN*.)

Subscribed and sworn to before me this }
 (12th) day of (*March*, 1916.) }

(*JOHN DRAKE*,)

Notary Public,
 (*New York*) County.

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

(*MATHILDA GREEN*,) being duly sworn, doth depose and say that (*she*) is the (*mother*) of the petitioner herein; that she has read the statements contained in the foregoing petition as to the estimated value of the estate of said infant, and verily believes the same to be true.

(*MATHILDA GREEN*.)

Sworn to before me this }
 (12th) day of (*March*, 1916.) }

(*JOHN DRAKE*,)

Notary Public,
 (*New York*) County.

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

I, (*MARGARET L. GREEN*,) do depose and say that I am a resident of (*No. 1415 Madison avenue, in the Borough of Manhattan, in the City and*) State of New York; that I am over twenty-one years of age, and that I will well, faithfully and

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honestly discharge the duties of guardian of the person and estate of (*Rebecca Green,*) infant, according to law.

(*MARGARET L. GREEN.*)

Sworn to before me this }
(12th) day of (*March, 1916.*) }

(*JOHN DRAKE,*)

Notary Public,

(*New York*) County.

The undersigned the nearest next of kin of full age

Name	Relationship
(<i>Mathilda Green</i>).....	(<i>Mother</i>)

of the above named infant do hereby waive the issue and service of a citation herein and do hereby consent and pray that (*Margaret L. Green*) be appointed the general guardian of the person and estate of said infant.

(*MATHILDA GREEN.*)

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

On this (12th) day of (*March, 1916,*) before me came (*Mathilda Green,*) to me known to be the individual described in and who executed the foregoing waiver and consent and acknowledged that (*she*) executed the same.

(*JOHN DRAKE,*)

Notary Public,

(*New York*) County.

I, (*MARGARET L. GREEN,*) the proposed Guardian named herein of the person and estate of (*Rebecca Green,*) infant, do hereby designate the Clerk of the Surrogates' Court of the County of (*New York,*) and his successor in office, as a person on whom service of any process issuing from the Surrogates' Court of the County of (*New York*) may be made, in like manner and with like effect as if it were served personally upon me, whenever I

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cannot be found and served within the State of New York after due diligence used. I am a resident of (*No. 1415 Madison Avenue, Borough of Manhattan, City of New York.*)

(*MARGARET L. GREEN.*)

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

On this (*12th*) day of (*March, 1916,*) before me personally came (*Margaret L. Green,*) known to be the individual described in and who executed the foregoing instrument, and (*she*) duly acknowledged to me that (*she*) executed the same.

(*JOHN DRAKE,*)

Notary Public,
(*New York*) County.

FORM No. 425

Petition — Infant Under 14 Years of Age

(*KINGS*) COUNTY SURROGATE'S COURT.

In the Matter
of the
Petition of (*MARIAN REED*) for the
Appointment of a General Guardian
of the Person and Property of (*JANE
BLAKE,*) Infant.

To the Surrogate's Court of the County of (*Kings:*)

The petition of (*MARIAN REED*) alleges:

That your petitioner resides at (*No. 3 East 50th Street in the Borough of Manhattan, City of New York,*) in the County of (*New York,*) and is the (*maternal grandmother*) of (*Jane Blake,*) an infant under the age of fourteen years, who resides at (*810 Eighth Avenue, Borough of Brooklyn, City of New York,*) in the County of (*Kings,*) with (*her father,*) and that she was born on the (*27th*) day of (*December, 1910.*)

Petition — Infant Under 14

That (*Ferdinand Blake*,) the father of said infant, resides at (810 Eighth Avenue, Borough of Brooklyn, City of New York.)

That (*Alice Reed Benton*,) the mother of said infant, resides at (75 K Street, Washington, D. C., [and was divorced from said *Ferdinand Blake* by a final decree of divorce granted in his favor by the Supreme Court, Kings County, and entered in the office of the Clerk of the County of Kings on March 17, 1914, and subsequently married *Benjamin Benton* in Washington, D. C.])

That the names and addresses of the said infant's nearest next-of-kin, of full age, residing in the county, are as follows:

(*Ferdinand Blake*, her father, whose waiver and consent to the appointment of petitioner is filed herewith.)

(*Jonathan Blake*, a brother, who resides at 80 Hamilton Avenue, Borough of Brooklyn, New York City.)

(*Thomas Blake*, paternal grandfather, who resides at the Crescent Club, Borough of Brooklyn, New York City.)

That said infant is entitled to certain personal property, which does not exceed the sum of (five thousand (\$5,000)) dollars, and real property, the annual rentals of which do not exceed the sum of (one thousand (\$1,000)) dollars, as your petitioner is informed and verily believes.

That said infant has not had, at any time, a guardian appointed by will or deed, or an acting guardian in socage, or a guardian of the person appointed pursuant to section 86 of the Domestic Relations Law.

Your petitioner therefore prays that a citation to show cause issue directed to all persons named herein who have a prior or equal right to show cause why a decree appointing your petitioner, who resides at (*No. 3 East 50th Street in the Borough of Manhattan, City of New York*,) the general guardian of the person and property of said infant during minority, should not be made.

(*MARIAN REED*,)

Petitioner.

Dated, the (15th) day of (*September*, 1916.)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*MARIAN REED*,) the above-named petitioner, being duly sworn, says: I have read the foregoing petition, and the same is

Petition — Infant Over 14

true to my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

(*MARIAN REED.*)

Sworn to before me this
(15th) day of (*September*, 1916.) }

(*HAZEL KIRKE,*)

Notary Public,

(*New York*) County, (*No. 16.*)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

I, (*MARIAN REED,*) do hereby consent to be appointed general guardian of the person and property of the above-named infant, during minority, and I do solemnly swear and declare that I will well, faithfully and honestly discharge the duties of such general guardian of the person and property of said infant, according to law.

(*MARIAN REED.*)

Sworn to before me this
(15th) day of (*September*, 1916.) }

(*HAZEL KIRKE,*)

Notary Public,

(*New York*) County, (*No. 16.*)

FORM No. 426

Petition for Letters of Guardianship — Infant Over 14

(*KINGS*) COUNTY SURROGATE'S COURT.

In the Matter
of the
Petition of (*MARTIN MARSHALL,*)
Infant, for the Appointment of a Gen-
eral Guardian of (*His*) Person and
Property.

To the Surrogate's Court of the County of (*Kings*):

The petition of (*MARTIN MARSHALL*) alleges:

That your petitioner resides at (*100 Munroe Place, Borough of Brooklyn, City of New York,*) in the County of (*Kings,*) with

Petition — Infant Over 14

(*Joseph Johnson*,) and is an infant over the age of fourteen years, and that (*he*) was born on the (21st) day of (*September*, 1890.)

That (*William Marshall*,) the petitioner's father, resides at (*Chicago, Illinois*.)

That (*Anita Marshall*,) petitioner's mother, (*is dead*).

That the names and addresses of the petitioner's nearest next-of-kin, of full age, residing in the county, are as follows: (*Claire Marshall Maxwell, his sister, who resides at 96 Union Street, Borough of Brooklyn, City of New York.*)

That said infant is entitled to certain personal property, which does not exceed the sum of (*ten thousand*) dollars, and real property, the annual rentals of which do not exceed the sum of (*fifteen hundred*) dollars, as your petitioner is informed and verily believes.

That said infant has not had, at any time, a guardian appointed by will or deed, or an acting guardian in socage, or a guardian of the person appointed pursuant to section 86 of the Domestic Relations Law.

Your petitioner therefore prays for a decree appointing (*Joseph Johnson*,) who resides at (*100 Munroe Place, Borough of Brooklyn, City of New York*,) the general guardian of (*his*) person and property during minority.

(*MARTIN MARSHALL*,)

Petitioner.

Dated, the (10th) day of (*June*, 1915.)

STATE OF NEW YORK, }
County of (*Kings*,) } ss.:

(*MARTIN MARSHALL*,) the above-named petitioner, being duly sworn, says: I have read the foregoing petition and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

(*MARTIN MARSHALL*.)

Sworn to before me this }
(10th) day of (*June*, 1916.) }

(*FREDERIC GILBERT*,)

Notary Public,

(*Kings*) County.

Petition — Infant Over 14

STATE OF NEW YORK, }
 County of (*Kings*.) } ss.:

I, (*JOSEPH JOHNSON*), do hereby consent to be appointed general guardian of the person and property of the above-named infant, during minority, and I do solemnly swear and declare that I will well, faithfully and honestly discharge the duties of such general guardian of the person and property of said infant, according to law.

(*JOSEPH JOHNSON*.)

Sworn to before me this }
 (10th) day of (*June*, 1916.) }

(*FREDERIC GILBERT*.)

Notary Public,
 (*Kings*) County.

FORM No. 427

Petition for Letters of Guardianship — Infant Over 14

SURROGATE'S COURT,
 County of (*Bronx*.)

In the Matter
 of the
 Guardianship of (*JAMES SULLI-*
VAN), an Infant.

To the Surrogate's Court of the County of (*Bronx*:)

The petition of (*JAMES SULLIVAN*) of the County of (*Bronx*) respectfully sheweth:

That your petitioner is a resident of the County of (*Bronx*), and is an infant over fourteen years of age, and was (*sixteen*) years of age on the (24th) day of (*July*) last past; and resides with (*his parents*) at (460 East 141st Street, Borough of Bronx, New York City.)

That (*Daniel Sullivan*), your petitioner's father, resides at (460 E. 141st Street, Borough of Bronx, City of New York.)

Petition — Infant Over 14

That (*Nellie Sullivan*,) your petitioner's mother, resides at (*460 East 141st Street, Borough of Bronx, New York City*.)

That the only next of kin or relatives of full age of said infant residing in the County of (*Bronx*) are

(*Daniel Sullivan, father, who resides at the address stated above.*)

(*Nellie Sullivan, mother, who resides at the address stated above.*)

That there are no other persons than those hereinbefore mentioned, interested in this proceeding.

That your petitioner is entitled to certain property and estate, to wit:

- | | |
|---|---------|
| 1. Moneys due or payable..... | (none) |
| 2. Other personal property consisting of (<i>a legacy bequeathed to him by the will of his grandfather</i>) of the estimated value of..... | (\$500) |
| 3. Annual income from any other personal property to which the infant is or will be entitled, the principal of which will not come to the hands of the guardian | (none) |
| 4. Annual income from real estate to which the infant is or will be entitled..... | (none) |

And that to protect and preserve the legal rights of your petitioner, it is necessary that some proper person should be duly appointed the guardian of the person and estate of your petitioner, your petitioner having never had a guardian appointed by will or deed, or an acting guardian in socage or a guardian of the person appointed pursuant to section 86 of the Domestic Relations Law to (*his*) knowledge or belief.

Your petitioner therefore prays that a decree issue appointing (*his father, Daniel Sullivan*,) residing at (*460 East 141st Street, Borough of Bronx, New York City*,) such guardian. And your petitioner will ever pray.

(*JAMES SULLIVAN*,)

Petitioner.

Dated, (*New York*,) the (*16th*) day of (*August*, 1916.)

Consent of Guardian

STATE OF NEW YORK, }
County of (*Bronx*), } ss.:

(*DANIEL SULLIVAN*,) residing at (460 *East 141st Street, Borough of Bronx, City of New York*,) being duly sworn, doth depose and say, that he has read the foregoing petition and is acquainted with the property and estate of the above-named infant, and that the same consists of real and personal estate, and annual income from any other personal property or real estate, to which the infant is or will be entitled, as above set forth.

(*DANIEL SULLIVAN*.)

Sworn this (16th) day of }
(*August*, 1916,) before me. }

(*WILLIAM WOOD*,)

Notary Public,

(*Bronx*) County.

STATE OF NEW YORK }
County of (*Bronx*), } ss.:

(*JAMES SULLIVAN*,) the petitioner named in the foregoing petition, being duly sworn, doth depose and say that he has read the foregoing petition subscribed by him and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

(*JAMES SULLIVAN*.)

Subscribed and sworn to before me }
this (16th) day of (*August*, 1916.) }

(*WILLIAM WOOD*,)

Notary Public,

(*Bronx*) County.

STATE OF NEW YORK, }
County of (*Bronx*), } ss.:

I, (*DANIEL SULLIVAN*,) do hereby consent to become such guardian and do solemnly swear and declare that I will well, honestly and faithfully discharge the duties of guardian of the

Designation of Clerk

person and estate of (*JAMES SULLIVAN*,) an infant, according to law.

(*DANIEL SULLIVAN*.)

Sworn to before me, this
(16th) day of (*August*, 1916.) }

(*WILLIAM WOOD*,)

Notary Public,

(*Bronx*) County.

FORM No. 428

Designation of Clerk

SURROGATE'S COURT,
County of (*Bronx*.)

In the Matter
of the
Application for Letters of Guardianship
of the Person and Estate of (*JAMES SULLIVAN*,) an Infant.

I, (*DANIEL SULLIVAN*,) about to be appointed guardian of (*JAMES SULLIVAN*,) an infant, do hereby designate the Clerk of the Surrogate's Court of the County of (*Bronx*,) and his successor in office, as a person on whom service of any process issuing from the Surrogate's Court of the County of (*Bronx*) may be made, in like manner and with like effect as if it were served personally upon me, whenever I cannot be found and served within the State of New York after due diligence used. I am a resident of No. (460 *East 141st Street, Borough of Bronx, City of New York*.)

STATE OF NEW YORK, }
County of (*Bronx*.) } ss.:

On this (16th) day of (*August*, 1916,) before me personally came (*Daniel Sullivan*,) to me known to be the individual described in and who executed the foregoing instrument, and (*he*) acknowledged to me that (*he*) executed the same.

(*WILLIAM WOOD*,)

Notary Public,

(*Bronx*) County.

Waiver of Citation

FORM No. 429

Waiver of Citation — Guardianship

SURROGATE'S COURT,

County of (*Bronx.*)

In the Matter
of the
Application for Letters of Guardianship
of the Person and Estate of (*JAMES
SULLIVAN,*) Infant.

The undersigned, (*NELLIE SULLIVAN, mother*) of the infant above named, does hereby consent and pray that (*Daniel Sullivan*) be appointed the guardian of the person and estate of said infant and does hereby waive the issue and service of a citation herein.

(*NELLIE SULLIVAN.*)

STATE OF NEW YORK, }
County of (*Bronx,*) } ss.:

On this (*15th*) day of (*August, 1916,*) before me came (*Nellie Sullivan,*) to me known to be the individual described in and who executed the foregoing waiver and consent and acknowledged that (*she*) executed the same.

(*WILLIAM WOOD,*)
Notary Public,
(*Bronx*) County.

FORM No. 430

Decree Appointing General Guardian — Infant Over 14

At a Surrogate's Court held in and for the County of
(*Kings*,) on the (15th) day of (*June*,) in the year
(1916.)

PRESENT:

Hon. (*HERBERT T. KETCHAM*,)

Surrogate.

In the Matter of the Petition of (<i>MARTIN MARSHALL</i> ,) Infant for the Appointment of a General Guardian of (<i>His</i>) Person and Property.

On reading and filing the petition of said infant praying for the appointment of (*Joseph Johnson*) the general guardian of (*his*) person and property during minority.

And on filing the bond required by law in the premises, which
* said bond has been duly approved,

IT IS DECREED, that said (*Joseph Johnson*) be and he hereby is appointed general guardian of the person and property of said infant, to serve until said infant shall attain the age of twenty-one years, or a successor to said general guardian shall be appointed and that letters of guardianship issue, on filing the oath required by law.

(*HERBERT T. KETCHAM*,)

Surrogate.

*As to how much bond required see Code, §§ 2650, 2651, C. C. P. If bond is not furnished by a Surety Company, execution of bond on official forms is usually required.

ALLOWANCE FOR INFANT

No expenditure should be made out of the principal or income of an infant's estate for his maintenance or education unless allowed by an order of the Surrogate. The requirements of the various Surrogates' Courts differ widely in this respect.

The practice of the Kings County Surrogate's Court, stated in Rule XXV of that court, is perhaps the most strict. The following forms are based on the Kings County practice as the most likely to meet the requirements of any county.

FORM No. 431

Order Granting Allowance for Infant Over 14

At a Surrogate's Court held in and for the County of
(*Kings*) at the Surrogate's office in said county on
the (4th) day of (*October*, 1915.)

PRESENT :

Hon. (*HERBERT T. KETCHAM*),
Surrogate.

In the Matter of the Application of (<i>EVA HUNT</i>), General Guardian of (<i>VIOLET HUNT</i>), for the Use of Funds for the Education and Support of Said (<i>VIOLET HUNT</i>), of (<i>EVA HUNT</i>), an Infant.
--

On reading and filing the petition of (*Eva Hunt and Violet Hunt*), an infant of the age of (*twenty*) years, both duly verified on the (23^d) day of (*October*, 1915,) and on the (24th) day of (*October*, 1915,) respectively, praying that she be authorized to apply the sum of (\$2,500) out of the funds now in her hands to the education and support of said (*Violet Hunt*), and the petitioners having proved to the satisfaction of

Petition — Infant Over 14

the Surrogate that the means of the parents of said (*Violet Hunt,*) together with the income from (*her*) estate, are insufficient to adequately provide for the support and education of said (*Violet Hunt,*) and on reading and filing the affidavit of (*Edward Hunt, father*) of said infant, duly verified the (20th) day of (*September, 1915,*)

ORDERED AND DECREED, that (*Eva Hunt,*) general guardian of (*Violet Hunt,*) is hereby authorized and empowered to apply during a period of one year (\$2,500) from the funds now in the (*New York Trust Company*) for the education and support of said infant, as follows:

(*That she be authorized to apply the same to the education and support of said infant in equal monthly installments of \$200 per month, beginning November 1, 1915.*)

(*HERBERT T. KETCHAM,*)

Surrogate.

FORM No. 432

Petition for Allowance for Infant Over 14

SURROGATE'S COURT,
(*Kings*) County.

In the Matter of the Application of (<i>EVA HUNT,</i>) General Guardian of (<i>VIOLET HUNT,</i>) for Use of Funds for the Education and Support of said (<i>VIOLET HUNT,</i>) an Infant.
--

To the Surrogate's Court of the County of (*Kings:*)

The petition of (*Eva Hunt,*) residing at (*Catskill, Greene County, New York, formerly of Cypress Hills in the Borough of Brooklyn, County of Kings,*) State of New York, respectfully shows:

That your petitioner is the (*mother*) of (*Violet Hunt,*) an infant of the age of (*twenty (20)*) years; that she was duly appointed general guardian of the person and property of said

infant by the order of this court made and entered (*April 14, 1911*;) that on the same day she duly qualified as such general guardian by filing her bond as directed in said order in the sum of (\$5,000,) and that pursuant to an order of this court made and entered (*February 28, 1913*,) she duly filed a second bond as directed in said order in the sum of (\$5,000, and that pursuant to an order of this court made and entered *October 23, 1914*, she duly filed a third bond as directed in said order in the sum of \$5,000, and that pursuant to an order of this court made and entered on *February 19, 1915*, she duly filed a fourth bond as directed in said order in the sum of \$83,000;) that the only property that has come into her hands as such guardian is as follows: (*On May 4, 1911, she received the sum of \$2,500; on March 11, 1913, she received the sum of \$2,500; on October 21, 1914, she received the sum of \$2,500; on March 26, 1915, she received the sum of \$8,100.72 and interest and the following securities: 11 shares of the capital stock of the N. Y. Central and H. R. R. R. Co.; 382 shares of the first preferred stock of Lord & Taylor; 3 shares of the capital stock of the Lincoln Trust Co.; 3 shares of the preferred stock of the Chicago, Great Western R. R. Co., from the executors of the estate of Edward P. Hunt, deceased, who was the grandfather of said Violet Hunt, on account of a bequest to said infant contained in the last will and testament of said Edward P. Hunt, whereby one-forty-second (1/42) of the testator's personal property was bequeathed to her.*)

Your petitioner is informed and believes that the total value of said bequest is (\$50,000) or thereabouts. Your petitioner has expended the sum of (\$2,500,) received on the (21st) day of (*October, 1914*,) under order of this court. The sum of (\$2,500) is little, if any, more than the income at (5 per cent.) upon the value of the infant's distributive share as fixed under the terms of the decree in the estate of (*Edward P. Hunt*,) entered on the (5th) day of (*August, 1914*.) At the present time said infant is attending at (*Vassar College*) and your petitioner needs the use of said last (\$2,500) during the coming year for (*her*) support and education, including the payment of tuition charges, books and clothing. Your petitioner, the infant's (*mother*,) has no separate income-producing property of (*her*) own. Her (*husband, Edward Hunt, Jr.*,) the infant's (*father*),

Petition — Infant Over 14

is (*upwards of fifty (50) years old and is not engaged in any business. Prior to the death of his father, Edward P. Hunt, he was associated in his father's business and derived his support from it, but his connection with the business terminated after his father's death and with its termination his income ceased. He has an interest in the estate of his father but the estate is not yet wound up and his share has not been distributed to him and as your petitioner is informed and believes his income from all sources is inadequate to provide for said infant such support and education as would be suitable to her social position and her future expectations.*)

Your petitioner therefore prays for an order authorizing her to apply during the coming year (\$2,500) from the funds in her hands now in the (*New York Trust Company*) to the education and support of said infant, as follows: (*That she be authorized to apply the same to the education and support of said infant in equal monthly installments of \$200 per month, beginning November 1, 1915.*)

(EVA HUNT,)

Petitioner.

I, (VIOLET HUNT,) hereby join in the above petition.

(VIOLET HUNT.)

STATE OF NEW YORK, }
County of (*Greene,*) } ss.:

(EVA HUNT,) the petitioner above named, being duly sworn, says that (*she*) has read the foregoing petition and knows the contents thereof, and that the same is true of (*her*) own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters (*she*) believes it to be true.

(EVA HUNT.)

Sworn to before me, this }
(23d) day of (*September, 1915.*) }

(JAMES CORAN,)

Notary Public,

(*Greene*) County.

(Verification)

Affidavit

FORM No. 433

Supporting Affidavit

SURROGATE'S COURT,
(*Kings*) County.

In the Matter

of the

Application of (*EVA HUNT*), General
Guardian of (*VIOLET HUNT*), for
use of funds for the education and
support of said (*VIOLET HUNT*),
an infant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*EDWARD HUNT*), being duly sworn, says: That he is the (*father*) of (*Violet Hunt*) and is (*upward of fifty years of age and is not engaged in any business*;) that (*prior to the death of his father, Edward P. Hunt, he was associated in his father's business and derived his support from it; but his connection with the business terminated after his father's death and with its termination his income ceased.*) That deponent has (*an interest in the estate of his father, the exact amount of which has not yet been determined, but which, as deponent is informed and believes, will be upward of \$50,000. Said estate is not yet wound up and has not been distributed.*) Deponent has no income producing property and no income from any source whatever.

(*EDWARD HUNT.*)

Sworn to before me this }
(*20th*) day of (*September, 1915.*) }

(*CHARLES HOFF*),

Notary Public,

(*New York*) County.

FORM No. 434

Order Granting Allowance for Minor Over 14

At a Surrogate's Court, held in and for the County of
(*New York*,) at the (*Hall of Records*,) in the (*Borough of Manhattan, City of New York*,) on the
(*19th*) day of (*October*, 1915.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*,)

Surrogate.

In the Matter of the Application of
(*FRANCES RUSSELL*, formerly
FRANCES WEEKS,) for an Allow-
ance to (*JOHN WEEKS*,) as General
Guardian of (*FRANCES*
JOHANNA RUSSELL, formerly
FRANCES JOHANNA WEEKS,)
a Minor.

On reading and filing the annexed petition of (*Frances Russell*, formerly *Frances Johanna Weeks*,) duly verified the (*4th*) day of (*October*, 1915,) the affidavits of (*Edwin B. McAllister*, *Fred Harris* and *Charles F. Russell*,) thereto annexed, and the affidavit of (*John Weeks*,) General Guardian of said minor, duly verified on the (*16th*) day of (*October*, 1915,) from which it appears that the said (*Frances Russell*,) a minor, desires this Court to give her said General Guardian an allowance of (*twelve*) dollars (\$12) per week,

NOW, on motion of (*Benjamin L. Blauvelt*,) attorney for the said petitioner and General Guardian, it is

ORDERED, that (*John Weeks*,) General Guardian herein of (*Frances Russell*, formerly *Frances Weeks*,) a minor, be and he is hereby permitted to pay and apply from the property of the said infant, the sum of (*twelve*) dollars (\$12) per week, as an allowance to be applied toward the living expenses, etc., of the said (*Frances Russell*, formerly *Frances Johanna Weeks*,) a minor, during the next year.

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

FORM No. 435

Petition for Allowance for Infant Over 14

SURROGATE'S COURT,

County of (*New York.*)

In the Matter of the Application of
(*FRANCES RUSSELL, formerly*
FRANCES WEEKS,) for an Allow-
ance to (*JOHN WEEKS,*) as General
Guardian of (*FRANCES RUSSELL,*
formerly FRANCES WEEKS,) a
Minor.

To the Surrogate's Court of the County of (*New York:*)

The petition of (*Frances Russell, formerly Frances Weeks,*) respectfully shows:

That she resides at (*No. 319 North Eighth Street, Terra Haute, State of Indiana;*) that she was (*nineteen*) years of age on the (*30th*) day of (*October, 1914;*) that heretofore (*John Weeks, father*) of your petitioner, was duly appointed General Guardian of her person and property by decree of the Surrogate's Court of the County of (*New York,*) duly made and entered in the office of the Clerk of said Court on the (*31st*) day of (*July, 1911,*) and that Letters of Guardianship were duly issued thereon to him on that day; that at the time of the appointment of said (*John Weeks*) as the General Guardian of your petitioner, her (*mother*) was living, and (*subsequently thereto the mother of your petitioner died;*)

That on the (*2nd*) day of (*January, 1913,*) your petitioner (*married Charles L. Russell, who was at that time engaged in the undertaking business; subsequent to his marriage to your petitioner, owing to heart trouble, he was compelled to give up his position at Niagara Falls, State of New York, and removed with your petitioner to the City of Cleveland, State of Ohio; that while in Cleveland, Ohio, he was taken ill with inflammatory rheumatism and heart trouble and thereby lost his employment;*)

That your petitioner (*has an infant daughter who is twenty months old;*) that (*prior to the last eighteen months, said Charles L. Russell, husband of your petitioner, was able to and did work*

Petition — Infant Over 14

and provide a comfortable and ample support and maintenance for his family but that since said time he has been afflicted with some affection of the heart which your petitioner is informed and believes is an affection commonly known as "heart leakage," and that because of such affection and because of the fact that he has frequent attacks of unconsciousness and fainting attacks, he is unable to work regularly or to do manual labor; that for some time past he has been unable to pursue any regular work;)

That (one Edwin B. McAllister, a practicing physician and surgeon of Terre Haute, Indiana, has made an affidavit as to the condition of the said Charles L. Russell,) which is hereto annexed and made a part of this petition; that (the said Charles L. Russell is not addicted to any drug habit or the use of liquor, which is vouched for by the affidavits of Fred Harris and Charles L. Russell,) which said affidavits are hereto annexed and made a part of this petition;

That (since the inception of the said affection of his heart, it has been necessary for petitioner's husband to expend all of his savings for the support of his said family and for medical attention,) and at this time your petitioner (and her husband and daughter are) entirely without funds and have no way of procuring the necessities of life; that heretofore and on or about the (3d) day of (August, 1914,) an application was made to this Court by your petitioner for an allowance, which application was granted and an order made and entered the (3d) day of (August, 1914,) awarding to her General Guardian (six) dollars (\$6) per week for her care and maintenance; that the term of said order expired on the (3d) day of (August, 1915;) that after careful consideration, your petitioner deems that it is necessary for the support and maintenance of herself (and child) that she be allowed about (twelve) dollars (\$12) per week, which sum is arrived at from the following estimated expenses:

[Set forth expenses.]

That your petitioner resides separate and apart from (John Weeks,) her (father) and General Guardian, who resides at (No. 832 Madison Street, Borough of Brooklyn, City of New York;) that your petitioner is informed and believes that (her) General Guardian has in (his) hands to the credit of your petitioner, the sum of about (one thousand two hundred) dollars (\$1,200), which is deposited in the (Emigrant Industrial Savings Bank, 51

Affidavit

Chambers Street, Borough of Manhattan, City of New York, being the balance of amount received from the estate of Johanna Baum, deceased, aunt of your petitioner,) after the deduction of necessary expenses in connection with the collection of the same and allowances as per order heretofore granted;

That (*owing to the care which she is required to give her said infant daughter,)* your petitioner is unable to take a position whereby she may earn money of her own;

WHEREFORE, your petitioner prays for an order allowing to said (*John Weeks,)* as (*her*) General Guardian, the sum of (*twelve*) dollars (\$12) (*per week,)* to be applied toward the living expenses of your petitioner, for which order no previous application has heretofore been made.

Dated, (*Terre Haute, Indiana, October 4, 1915.*)

(*FRANCES RUSSELL,*)

Petitioner.

(Verification)

FORM No. 436

Supporting Affidavit

SURROGATE'S COURT,

County of (*New York.*)

In the Matter of the Application of
(*FRANCES RUSSELL, formerly*
FRANCES WEEKS,) for an Allow-
ance to (*JOHN WEEKS,)* as Gen-
eral Guardian of (*FRANCES*
RUSSELL, formerly FRANCES
WEEKS.)

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*JOHN WEEKS,)* being duly sworn, deposes and says:

That he resides at (*No. 832 Madison Street, Borough of Brooklyn, City of New York;*) that he is the General Guardian of (*Frances Russell, formerly Frances Weeks,)* a minor over the age of fourteen years; that said minor was (*nineteen*) years of

Affidavit

age on the (30th) day of (October, 1914;) that your deponent was duly appointed General Guardian of said minor by decree duly made and entered in the office of the Clerk of this Court on the (31st) day of (July, 1911,) and Letters of Guardianship issued thereunder to your deponent on that day; that your deponent is the (father) of said minor; that the (mother) of said minor is dead; that said minor is (married to, and lives with her husband, Charles L. Russell, at No. 319 North Eighth Street, Terre Haute, State of Indiana;) that deponent is informed and believes that said (Charles L. Russell has been ill and in poor health and has been unable to obtain permanent employment, and that he has been suffering from mitral insufficiency of the heart, commonly known as "heart leakage";) that the said minor (has an infant daughter of the age of twenty months, who is maintained and supported by her parents;) that deponent has in his hands as General Guardian of said minor, to (her) credit the sum of (one thousand two hundred one) dollars (\$1,201), which is deposited in the (Emigrant Industrial Savings Bank, Nos. 49-51 Chambers Street, Borough of Manhattan, City of New York,) being the balance (received from the estate of Johanna Baum, deceased aunt of said minor,) after the payment of expenses in connection with the same, and allowance as per order heretofore previously entered, and expenses of administration of the estate;

That heretofore a petition was presented by the said (Frances Russell) for an allowance, and an order thereon dated the (3d) day of (August, 1914,) was duly made and entered granting said petition and authorizing the expenditure of (six) dollars (\$6) per (week) for one year from the date thereof;

Deponent deems it necessary that an order be made herein allowing (him) as such General Guardian, the sum of (twelve) dollars (\$12) per (week,) to be applied toward (rent, clothing, and living expenses) of said minor (and her infant daughter;)

That no previous or similar application for the annexed order has heretofore been made.

(JOHN WEEKS.)

Sworn to before me this }
(16th) day of (October, 1915.) }

(BENJ. LESSER,)

Notary Public,

(New York) County.

FORM No. 437

Order for an Allowance for Infant Under 14

At a Surrogate's Court held in and for the County of
(*New York*,) at the (*Hall of Records*) in the (*Borough of Manhattan, City of New York*,) on the
(*26th*) day of (*March, 1916*.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*,)

Surrogate.

In the Matter of the Application of
(*IDA EILERT*,)
As General Guardian of (*LOUISE
EILERT*,) a Minor, under the Age of
Fourteen Years for an Allowance.

Upon reading and filing the annexed petition of (*Ida Eilert*,) duly verified the (*21st*) day of (*March, 1916*,) and the consent of the (*World Indemnity Company*,) surety on the official bond for said guardian, from which it appears that as general guardian of (*Louise Eilert*,) she maintains and supports said infant and also educates, maintains and supports (*her brother, Henry Eilert*,) a minor (*under*) the age of fourteen years, and in order to continue such maintenance, education and support, she desires this Court to grant her an allowance of (*five*) dollars (\$5) per month which she deems as a reasonable charge for that purpose, it is,

On motion of (*Benjamin L. Blauvelt*,) attorney for the petitioner herein,

ORDERED AND DECREED that (*Ida Eilert*,) as General Guardian of (*Louise Eilert*,) a minor (*over*) the age of fourteen years herein be awarded the sum of (*five*) dollars (\$5) per month as allowance for the maintenance, support and education of the said (*Louise Eilert*,) and that said sum be deducted from the funds now in the hands of the said general guardian to the credit of said infant.

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

FORM No. 438

Petition for an Allowance for an Infant Under 14

SURROGATES' COURT,
(*New York*) County.

In the Matter of the Application of
(*IDA EILERT*,)
As General Guardian of (*LOUISE
EILERT*), a Minor under the Age of
Fourteen Years, for an Allowance.

To the Surrogates' Court of the County of (*New York*):

The petition of (*Ida Eilert*) respectfully shows that she resides at (*No. 387 Lenox Avenue in the Borough of Manhattan, City of New York.*)

That she is the general guardian of (*Louise Eilert*), a minor under the age of fourteen years. That said minor was (*thirteen*) years of age on the (*8th*) day of (*August*) last past and that your petitioner was duly appointed as such general guardian by decree of one of the Surrogates of the County of (*New York*) entered in the office of the Clerk of this Court on the (*16th*) day of (*March, 1911,*) and that letters of guardianship thereon were issued to your petitioner on that day. That as such general guardian she has received personal property to the credit of said infant from (*the estate of the father of said minor, Ludwig Eilert, deceased,*) which now amounts to the sum of (*three hundred thirty-three and 22/100*) dollars (\$333.22) which moneys are now on deposit in the (*Dime Savings Bank*) in the (*City of New York*) located at (*14th Street and Fourth Avenue in the Borough of Manhattan, City of New York.*) That said minor is (*learning the millinery trade*) and is at present earning the sum of (*five*) dollars (\$5) per week, the greater part of which is used for car fares and lunches for said infant.

That your petitioner (*also maintains, educates and supports the brother of said infant, Henry Eilert, a minor under the age of fourteen years, from whom she receives the sum of five dollars (\$5) per week, out of which she allows him car fares and lunches and buys his clothing.*)

Annual Inventory and Account

That your petitioner has no real or personal property of her own. That she has no income from any source whatsoever except the moneys she earns (*by working out by the day as a seamstress whenever she can get employment.*)

That the (*husband of your petitioner and*) the father of said infants is dead.

That in order to enable your petitioner to continue the proper maintenance, education and support of said minor, it will be necessary that she be allowed a reasonable sum per month for her maintenance, education and support which your petitioner places at the sum of (*five*) dollars (\$5) per month, for which no other or previous application has been made.

Dated, (*New York, March 21, 1913.*)

(*IDA EILERT,*)

Petitioner.

(Verification)

FORM No. 439

Annual Inventory and Account of General Guardian

SURROGATES' COURT,
County of (*New York.*)

In the Matter of the Annual Inventory
and Account of (*FRANK HERWIN,*)
General or Testamentary Guardian of
(*FRANK HERWIN, JR.,*) Infant.

I, (*Frank Herwin,*) residing at No. (*207 Fourth Avenue, Borough of Manhattan, City of New York,*) general [or testamentary] guardian of (*Frank Herwin, Jr.,*) infant, do make, render and file the following inventory and account for the year ending December 31, 19(*15.*)

On the (*25th*) day of (*August, 1915,*) I was duly appointed the general [or testamentary] guardian of (*Frank Herwin, Jr.,*) infant, by one of the Surrogates [or the Supreme Court] of the County of (*New York.*)

Inventory and Schedules

SCHEDULE A, hereinafter set forth (as part of said inventory), contains a full and true statement and description of each article or item of personal property and the value thereof, and each sum of money, either principal or interest of said infant (*Frank Herwin, Jr.*,) received by me since (*my appointment*) [or my said last account] to December 31, 19 .

SCHEDULE B, hereinafter set forth (as part of said inventory), contains a full and true statement and list of the articles or items of said property or moneys remaining in my hands December 31, 19(15.)

SCHEDULE C, hereinafter set forth (as part of said inventory), contains a full and true statement of the manner in which I have disposed of the articles or items of said property or money not remaining in my hands December 31, 19(15.)

SCHEDULE D, hereinafter set forth (as part of said inventory), contains a full and true statement of the amount and nature of each investment of money made or held by me, and of the manner in which the fund is at present invested and the name of the bank in which any moneys are at present deposited and any interest infant has in real property.

Said Schedules A, B, C and D constitute said inventory and are respectively signed by me.

SCHEDULE E, hereinafter set forth and signed by me, is a full and true summary in form of debtor and creditor, of all my receipts and disbursements of money and of investments made or held by me since (*my appointment*) or [since my account made for the year 19 . . . , dated ,] and distinctly states the total amount of the balance remaining in my hands as shown by the last account; and the total amount of the balance in my hands to be charged to me in the next year's account, is the sum of (*no*) dollars.

SCHEDULE F shows the name and residence of each surety on the bond if a natural person, whether he be living at the time of the rendition of the account; and whether the condition of any surety on the bond have become so impaired as to materially affect his financial responsibility.

All of which is respectfully submitted.

Dated, (*July 15, 1916.*)

(*FRANK HERWIN.*)

Inventory and Schedules

SCHEDULE A

(*One-half rentals of house and lots 9 and 10,
Block "A," Larchmont Manor, for 8 months at
\$50 a month*) (\$200 00)

(FRANK HERWIN,
(General) Guardian.

SCHEDULE B

(None)

(FRANK HERWIN,
(General) Guardian.

SCHEDULE C

(*Catherine A. Campbell, Guardian of May Dale,
one half interest on \$8,000 5% mortgage on
house and lots 9 and 10 above to Nov. 5, 1913*). (\$200 00)

(FRANK HERWIN,
(General) Guardian.

SCHEDULE D

(*One-half interest in house and lots 9 and 10,
Block "A," Larchmont Manor, N. Y.*).....

(FRANK HERWIN,
(General) Guardian.

SCHEDULE E

I charge myself as follows:

With amount as per Schedule ("A")..... (\$200 00)

I credit myself as follows:

With amount as per Schedule ("C")..... (200 00)

Leaving (*nothing in my hands.*)

(FRANK HERWIN,
(General) Guardian.

SCHEDULE F

(*Eastern Surety Company, 111 Broadway, New York City.*)

(FRANK HERWIN,
(General) Guardian.

Verification

STATE OF NEW YORK, }
 County of (*New York.*) } ss.:

I, (*FRANK HERWIN,*) being duly sworn, say: that I am the general [or testamentary] guardian of (*Frank Herwin, Jr.,*) infant; that the foregoing inventory and account contain to the best of my knowledge and belief a full and true statement of all my receipts and disbursements on account of my ward; and of all money and other personal property of my ward which have come to my hands or have been received by any other person by my order or authority or for my use since (*the date of my appointment*) or [since my account made for the year 19.., dated.,] and of the value of all such property, together with a full and true statement and account of the manner in which I have disposed of the same, and of all the property remaining in my hands at the present time; and a full and true description of the amount and nature of each investment made by me since (*the date of my appointment*) or [since my account made for the year 19.., dated,] and that I do not know of any error or omission in the inventory or account to the prejudice of my ward.

(*FRANK HERWIN.*)

Sworn to before me, this }
 (18th) day of (*July, 1916.*) }

(*GEORGE SMITH,*)

Notary Public,

(*New York*) County.

SPECIAL GUARDIAN

FORM No. 440

Petition of Infant Over Fourteen for Special Guardian*

SURROGATES' COURT,
(*New York*) County.

In the Matter

of the

Application of (*WILLIAM TAYLOR*
and *JOHN ASTOR*,) as Trustees
Under the Last Will and Testament of
(*WILLIAM ASTOR*,) Deceased, for
Leave to Resign Testamentary Trusts
Under Section 2572 of the Code of
Civil Procedure, and for Leave to
Have Their Accounts as Such Testa-
mentary Trustees Judicially Settled.

To the Surrogates' Court of the County of (*New York*:)

The petition of (*Charles Astor*,) at present residing at (621
Fifth Avenue, in the Borough of Manhattan, City of New York,)
respectfully sheweth:

First. That your petitioner is a resident of the county of (*New York*,) is an infant over the age of fourteen years, to wit: of the age of (*twenty*) years on the (*18th*) day of (*July, 1915*;) that his father is dead and that he at the present time resides with his mother (*Sarah Astor*,) at the above address; that his said mother (*Sarah Astor*,) is his general guardian.

Second. That your petitioner is one of the parties to the above-entitled proceeding and is informed and verily believes that he is entitled to certain property and estate, and that his interest therein arises out of the fact that he is one of the beneficiaries under the

* Petition made after service of citation on infant.

Petition — Infant Over 14

will of (*William Astor*,) deceased, who was his (*father*, but that said interest will not vest in possession in him until he arrives at the age of thirty-five years.)

Third. That at the (*City of New York on February 9, 1916*,) your petitioner was served personally with a (*supplemental*) citation in this proceeding, which (*supplemental*) citation is returnable on the (*19th*) day of (*February, 1916*.)

Fourth. That your petitioner desires to appear herein by a special guardian to protect and preserve the rights and interests which (*he*) may have in this proceeding; that (*he*) has informed his (*mother and general guardian*) of his desire to appear by special guardian other than through (*her*) and (*his said mother*) has made no objection to this application but, on the contrary, approves the same, as appears by (*her*) affidavit hereto annexed.

Fifth. That your petitioner is informed and verily believes that (*George Kent*,) a counsellor-at-law, residing at (*25 Park Place, in the Borough of Brooklyn, City of New York*,) and having an office at (*132 Liberty Street in the Borough of Manhattan*,) is a competent, responsible and proper person to protect the interests of your petitioner herein; and that he has no interest whatever in this proceeding, and is not connected in business with the attorney or counsel of or any party to the proceeding, and your petitioner has not been influenced in making this application for the appointment of such special guardian by any person.

That no previous application has been made for the relief herein asked.

WHEREFORE, your petitioner prays that an order may be made herein appointing the said (*George Kent*,) special guardian to appear herein, and protect the rights and interests of your petitioner.

And your petitioner will ever pray.

Dated, (*New York, January 18, 1916*.)

(*CHARLES ASTOR*.)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*CHARLES ASTOR*,) being duly sworn, deposes and says, that (*he*) is the petitioner above named; that (*he*) has read the foregoing petition, and knows the contents thereof, and that the

Consent

same is true to (*his*) own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters believes it to be true.

(*CHARLES ASTOR.*)

Sworn to before me, this }
(18th) day of (*January*, 1915.) }

(*EDWARD JAMES,*)

Notary Public,

(*N. Y.*) Co., No. (296.)

FORM No. 441

Consent of Proposed Special Guardian

SURROGATES' COURT,

County of (*New York.*)

In the Matter

of the

Application of (*WILLIAM TAYLOR*
and JOHN ASTOR,) as Trustees
Under the Last Will and Testament of
(*WILLIAM ASTOR,*) Deceased, for
Leave to Resign Testamentary Trusts
Under Section 2572 of the Code of
Civil Procedure, and for Leave to
Have Their Accounts as Such Testa-
mentary Trustees Judicially Settled.

I, (*GEORGE KENT,*) an attorney and counsellor-at-law, residing at (*25 Park Place, in the Borough of Brooklyn, City of New York,*) having an office at (*132 Liberty Street, in the Borough of Manhattan,*) do hereby consent to become special guardian for (*Charles Astor,*) an infant, and one of the parties to the above-entitled proceeding.

Dated, (*February 19, 1916.*)

(*GEORGE KENT.*)

(Acknowledgment)

Affidavit of Proposed Guardian

FORM No. 442

Affidavit of Proposed Special Guardian

SURROGATES' COURT,
County of (*New York*.)

In the Matter

of the

Application of (*WILLIAM TAYLOR*
and *JOHN ASTOR*,) as Trustees
Under the Last Will and Testament of
(*WILLIAM ASTOR*,) Deceased, for
Leave to Resign Testamentary Trusts
Under Section 2572 of the Code of
Civil Procedure, and for Leave to
Have Their Accounts as Such Testa-
mentary Trustees Judicially Settled.

STATE OF NEW YORK, }
County of (*New York*.) } ss.:

(*GEORGE KENT*,) being duly sworn, says: That he is an attorney and counsellor-at-law and has been for (*ten*) years last past. That he is the person mentioned in the consent hereto annexed; that he is in all respects competent to protect whatever rights the petitioner, (*Charles Astor*,) may have in the above-entitled proceeding; that he is a freeholder in the County of (*New York*) and a responsible person; that he has no interests adverse to those of the said infant nor has he had any interest whatever herein; that he is not connected in business with the attorney or counsel of any party to this proceeding; and that he is worth upwards of (\$5,000) in personal property over and above all debts and liabilities.

(*GEORGE KENT*.)

Sworn to before me, this }
(*19th*) day of (*February*, 1916.) }

(*EDWARD JAMES*.)

Notary Public,

(*New York*) Co. (296.)

Affidavit of Parent

FORM No. 443

Affidavit of Parent of Infant

SURROGATES' COURT,
County of (*New York.*)

In the Matter

of the

Application of (*WILLIAM TAYLOR*
and *JOHN ASTOR*,) as Trustees
Under the Last Will and Testament of
(*WILLIAM ASTOR*,) Deceased, for
Leave to Resign Testamentary Trusts
Under Section 2572 of the Code of
Civil Procedure, and for Leave to
Have Their Accounts as Such Testa-
mentary Trustees Judicially Settled.

STATE OF NEW YORK, }
County of (*New York.*) } ss.:

(*SARAH ASTOR*,) being duly sworn, says: I am the
(*mother*) of (*Charles Astor*,) the petitioner herein, (*and am also*
his general guardian.) Said petitioner resides with me at the
present time at (*No. 621 Fifth Avenue, in the Borough of Man-*
hattan, City of New York.)

Said petitioner has informed me that (*he*) desires to apply to
this court for the appointment of (*George Kent*) as his special
guardian in this proceeding; and I approve such application. I
have not influenced the said petitioner in any way in the choice
of a guardian, but his selection was his own act.

(*SARAH ASTOR.*)

Sworn to before me, this }
(18th) day of (*February*, 1916.) }

(*EDWARD JAMES*,)

Notary Public,

(*New York*) Co. (296.)

Order

FORM No. 444

Order Appointing Special Guardian (Infant Over Fourteen)

At a term of the Surrogates' Court, held in and for the County of (*New York*), at (*the Hall of Records, in the Borough of Manhattan, City of New York*), on the (*25th*) day of (*February*, 1916.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*),

Surrogate.

In the Matter

of the

Application of (*WILLIAM TAYLOR and JOHN ASTOR*), as Trustees Under the Last Will and Testament of (*WILLIAM ASTOR*), Deceased, for Leave to Resign Testamentary Trusts Under Section 2572 of the Code of Civil Procedure, and for Leave to Have Their Accounts as Such Testamentary Trustees Judicially Settled.

On reading and filing the petition of (*Charles Astor*), verified the (*18th*) day of (*February*, 1916;) the consent and the affidavit of (*George Kent*), dated and verified the (*19th*) day of (*February*, 1916;) together with the affidavit of (*Sarah Astor*), verified the (*18th*) day of (*February*, 1916,) whereby it appears that (*George Kent*) is a competent and responsible person to appear as special guardian for (*Charles Astor*), it is

ORDERED, that (*George Kent*), counsellor-at-law, be, and he hereby is, appointed special guardian for (*Charles Astor*), in the above-entitled proceedings and authorized and directed to appear therein and take such steps as he may deem proper for the protection of the interest of said infant.

(*ROBERT LUDLOW FOWLER*),

Surrogate.

ACCOUNTING

An executor or administrator may voluntarily present an account of his proceedings for judicial settlement:

- (a) When notice to present claims has been published:
When the time stated in the published notice for presentation of claims has expired.
- (b) When no notice to present claims has been published:
After the expiration of one year since the issuance of letters.
- (c) When his letters have been revoked.

He may be compelled to account:

- (a) Not less than fifteen days after the expiration of the time stated in the published notice for the presentation of claims.
- (b) After the expiration of one year from the issuance of letters.
- (c) When his letters have been revoked or for any reason his powers have ceased. (For other cases, see § 2726, Code.)

As to who should be cited, see § 2730, Code.

As to contents of petition generally, see § 2521, Code.

Citation must issue to the Attorney-General of the State:

Where it appears that there is no heir-at-law or next of kin, as the case may be; or that it is not known whether or not there be such; or when all the parties interested are non-resident aliens.

As to unknown parties:

If any persons interested, or their names, residences and post-office addresses be unknown, the petition must substantially set forth the *facts* which show what efforts have been made to ascertain the same, a general description of the parties, and their connection with the decedent and their interest in the matter.

Outline of Procedure

If infants are interested:

State whether or not the infant has a general or testamentary guardian, whether or not his father, or, if he be dead, his mother, is living, giving the post-office addresses of such persons, and the name and post-office address of the person with whom such infant resides.

Incompetents:

If any person named is an adjudged, or an alleged incompetent, state facts regarding his incompetency, and the name and post-office address of a relative or friend having an interest in his welfare; also the name and post-office address of the committee, if any, and the name and, if confined, the post-office address of the person or institution having the care or custody of the incompetent.

In voluntary cases:

The petition for settlement and the account to which it refers should be filed at the same time together with a copy of the will if account is made by an executor, administrator, c. t. a., or a trustee under a will. Proof that the transfer tax has been paid or the estate exempted from tax by an order is also usually required in all cases.

Forms for this proceeding are provided by the Surrogates' Courts in several of the counties. While these are not uniform, their use promotes the convenience of both the court and the attorney as an indication of local requirements.

Outline of Procedure

1. Obtain waivers of citations to accounting when paying claims or legacies before decree.
2. Prepare account of proceedings and schedules following any forms for this purpose provided by Surrogate's Court.
3. Prepare petition for settlement of account, any waivers needed, citation to show cause why account should not be settled and allowed, and order for service of citation by mail or publication, if needed.

Outline of Procedure

4. File account and schedules, petition for settlement, copy of will and copy of order assessing transfer tax or exempting estate.
5. Have citation issued by clerk and obtain order for service by mail or publication, if needed.
6. Serve citation on all parties named therein and proceed with service by mail or publication.
7. File original citation with proof of service by affidavit or acknowledgment of parties served and affidavit of publication (if needed) at least one day before return day.
8. Attend on hearing and if no objections filed have matter marked for decree.
9. If no appearances in opposition,
Draw and submit:
 Decree settling account.
 Bill of costs and affidavit proving same.
10. If appearances have been made, wait eight days for possible objections to be filed.
11. Draw decree and serve proposed decree with two days' notice of settlement on all parties who have appeared.
12. Prepare bill of costs and affidavits to support same and give two days' notice of taxation of same at the same time and place for settlement of decree.
 Enter in diary, day when proposed decree and bill of costs to be submitted.
13. Decree signed and entered
14. Complete distribution and file vouchers showing compliance with terms.
15. Serve copy of decree on any surety company on bond, if any, of accounting party to terminate bond.

By Executor — Petition

FORM No. 445

Petition for Voluntary Accounting — Executor

SURROGATES' COURT,
County of (*New York*.)

In the Matter

of the

Judicial Settlement of the Account of
Proceedings of (*AUGUST MULLER*) as Executor of (*SOPHIE MULLER, also known as SOPHIE MOLLER,*) Deceased.

To the Surrogates' Court of the County of (*New York*:)

The petition of (*August Muller,*) residing at (*189 Flatbush Avenue, Borough of Brooklyn, City of New York,*) respectfully states:

That letters testamentary under the last will and testament of (*Sophie Muller, also known as Sophie Moller,*) deceased, who at the time of (*her*) death was a resident of (*1023 Columbus Avenue, Borough of Manhattan, City and*) State of New York, were granted to your petitioner by the Surrogates' Court of (*New York*) County, on the (*3d*) day of (*July, 1916.*)

That more than one year has elapsed since the issuance of said letters testamentary.

[That more than six months has elapsed since the issuance of letters testamentary and that the time for presentation of claims as fixed by a notice duly published has expired.]

That the names and post-office addresses of all creditors or persons claiming to be creditors of the decedent (except such as by vouchers filed with the account appear to have been paid), of the sureties on the official bond of your petitioner [of the (*widow or husband*)] of the decedent, of all the heirs-at-law and next of kin of the decedent, of all devisees and trustees under the will of decedent, of all legatees (except such as by vouchers and releases duly executed and filed appear to have been paid,) and of all other necessary and proper parties, are as follows:

By Executor — Petition

Name	Nature of interest	Post-office address
(August Muller).....	(One-quarter of residuary estate) ..	(189 Flatbush avenue, Borough of Brooklyn, City of New York.)
(Theodore Sprager).....	(One-quarter of residuary estate) ..	(Durlach, Empire of Germany.)
(Anna Marie Schultz).....	(One-quarter of residuary estate) ..	(Frankfurt am Main, Empire of Germany.)
(Louise Schultz).....	(One-quarter of residuary estate) ..	(Heilund Pflegeanstalt, Weisloch near Heidelberg, Empire of Germany.)
(Gretchen Gluck).....	(Specific legatee).....	(310 Second avenue, Borough of Manhattan, New York City.)

That there are no other persons than those above mentioned interested in this proceeding.

That all of said above-mentioned persons are of full age and sound mind, except (*Anna Marie Schultz, an incompetent, of whom deponent is informed and believes Adolph Spielman of Neue Krame No. 9, Frankfurt am Main, Empire of Germany, has been appointed committee,*) and (*Louise Schultz,*) who is an infant over the age of fourteen years, and resides with her (*father, Ludwig Schultz, at Frankfurt-am-Main, Germany,*) and of whom no general or testamentary guardian has heretofore been appointed, and (*Gretchen Gluck,*) who is an infant under the age of fourteen years, and resides with her (*mother, Martha Gluck, at 210 Second Avenue, Borough of Manhattan, City of New York,*) of whom (*Martha Gluck, her mother,*) was appointed general guardian, by letters dated (*June 10, 1915,*) issued by the Surrogates' Court of (*New York*) County.

That the estate herein amounts to [less] than five thousand dollars.

That your petitioner is desirous of rendering to said Surrogates' Court of (*New York*) County an account of (*his*) proceedings, and therefore prays that (*his*) account be judicially settled, and that the persons above mentioned and all necessary and proper persons be cited to show cause why such settlement should not be had and for such other and further relief as the court may deem just and proper, and that an order be granted according to law directing the service of the citation personally without the State or by publication upon the persons hereinbefore stated to be non-residents of the State or otherwise.

Dated, (*August 17, 1916.*)

(*AUGUST MULLER,*)

Petitioner.

By Executor — Account

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

(*AUGUST MULLER*,) the petitioner named in the foregoing petition, being duly sworn, deposes and says that (*he*) has read the foregoing petition subscribed by (*him*) and knows the contents thereof; and that the same is true of (*his*) own knowledge, except as to the matters herein stated to be alleged on information and belief, and that as to those matters (*he*) believes it to be true.

(*AUGUST MULLER*,)

Petitioner.

Sworn to this (17th) day }
 of (*August*, 1916.) }

(*ALFRED LORREY*,)

Notary Public,

(*New York*) County.

In New York, (*Rule VIII*,) Bronx and Queens Counties a copy of the will and a sworn copy of the receipt showing payment of transfer tax or of order exempting estate from tax must be filed with the account.

FORM No. 446

Account of Proceedings

SURROGATES' COURT,

County of (*New York*.)

In the Matter of the Judicial Settlement of the Account of Proceedings of (<i>HENRY JAMES</i>) as (<i>Sole Surviving Executor</i>) of (<i>EUGENE HIGGINS</i>,) Deceased.
--

To the Surrogates' Court of the County of (*New York*:)

I, (*HENRY JAMES*,) residing at (20 West 94th Street, in the Borough of Manhattan, City of New York,) in the County

By Executor — Account

of (*New York*,) do render the following account of (*my*) proceedings as (*sole surviving executor*) of (*EUGENE HIGGINS*,) deceased. On the (*14th*) day of (*September*, 1915,) letters (*testamentary*) were issued to (*me and Michael Hines*.) On the (*20th*) day of (*September*, 1915, *we*) caused an inventory of the personal estate of the deceased to be filed in this office, which personal estate therein set forth amounts, by appraisement by the appraisers duly appointed, to (\$40,000.00.)

Schedule A, hereto annexed, contains a statement of all the property contained in said inventory, sold by (*me*) at public or private sale, with the prices and manner of sale; which sales were fairly made by (*me*) at the best prices that could then be had, with due diligence, as I then believed; it also contains a statement of all the debts due the said estate and mentioned in said inventory, which have been collected, and also of all interest or moneys received by (*me*) for which (*I am*) legally accountable.

Schedule B, hereto annexed, contains a statement of all debts in said inventory mentioned, not collected or collectible by (*me*) together with the reasons why the same have not been collected and are not collectible; and also a statement of the articles of personal property mentioned in said inventory unsold, and the reasons of the same being unsold, and their appraised value; and also a statement of all property mentioned therein lost by accident, without any wilful default or negligence, the cause of its loss and appraised value. No other assets than those in said inventory, or herein set forth, have come to (*my*) possession or knowledge, and all the increase or decrease in the value of any assets of said deceased is allowed or charged in said Schedules A and B.

Schedule C, hereto annexed, contains a statement of all moneys paid by (*me*) for funeral and other necessary expenses for said estate, together with the reasons and object of such expenditure.

On or about the (*25th*) day of (*September*) in the year (1915, *I*) caused a notice for claimants to present their claims against the said estate to me within the period fixed by law, and at a certain place therein specified to be published in two newspapers, according to law, for six months, pursuant to an order of the Surrogate of the County of (*New York*;) to which order, notice and due proof of publication herewith filed, (*I*) refer as part of this account.

By Executor — Account

Schedule D, hereto annexed, contains a statement of all the claims of creditors, presented to and allowed by (*me*) or disputed by (*me*) and for which judgment or decree has been rendered against (*me*) together with the names of the claimants, the general nature of the claim, its amount, and the time of the rendition of the judgment; it also contains a statement of all moneys paid by (*me*) to the creditors of the deceased, and their names, and the time of such payment.

Schedule E, hereto annexed, contains a statement of all moneys paid to the legatees, widow, or next of kin of the deceased.

Schedule F, hereto annexed, contains the names of all persons entitled as husband, widow, legatee, or next of kin of the deceased, to a share of the estate, or fund, with their post-office addresses, degree of relationship, and a statement of which of them are minors and whether they have any father, mother or guardian, and if so, their names and post-office addresses to the best of (*my*) knowledge, information and belief.

Schedule G, hereto annexed, contains a statement of all other facts affecting (*my*) administration of said estate or fund, (*my*) rights and those of others interested therein.

(*I*) charge (*myself*) as follows:

With amount as shown by Exhibit A..... \$43,710 93

(*I*) credit (*myself*) as follows:

With amount of loss on sales, as per

Schedule B \$2,175 00

With amount of debts not collected, as

per Schedule B..... 000 00

With amount of Schedule C..... 1,274 51

With amount of Schedule D..... 000 00

With amount of Schedule E..... 4,043 67

7,493 18

Leaving a balance of..... \$36,217 75

(consisting of \$30,000 in mortgages and \$6,217.75 in cash) to be distributed to those entitled thereto, subject to the deductions of the amount of (*my*) commissions, and the expenses of this

Verification

accounting. The said schedules, which are severally signed by (*me*) are part of this account.

SURROGATES' COURT,
County of (*New York*.)

In the Matter.
of the
Judicial Settlement of the Account of
Proceedings of (*HENRY JAMES*) as
(*Sole Surviving Executor*) of
(*EUGENE HIGGINS*,) Deceased.

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*I, HENRY JAMES*,) residing at (20 W. 94th Street, Borough of Manhattan, City of New York,) as (*sole surviving executor*) of (*Eugene Higgins*,) deceased, being duly sworn, say that the charges made in the foregoing account of proceedings and schedules annexed, for moneys paid by (*me*) to creditors, legatees and next of kin, and for necessary expenses, are correct, that (*I*) have been charged therein all the interest for moneys received by (*me*) and embraced in said account, for which (*I am*) legally accountable; that the moneys stated in said account as collected were all that were collectible, according to the best of (*my*) knowledge, information and belief; that the allowances in said decrease in value of any assets, and charges therein, for the increase in such value, are correctly made; and that (*I*) do not know of any error in said account or anything omitted therefrom which may in anywise prejudice the rights of any party interested in said estate or fund; and that said account contains, to the best of (*my*) knowledge and belief, a full and true statement of all (*my*) receipts and disbursements on account of said estate or fund, and of all money and other property belonging to said estate or fund which have come into (*my*) hands, or which have been received by any other person for (*me*), or by (*me*), or by order or authority for (*my*) use, and that (*I*) do not know of any

Schedules

error or omission in the account to the prejudice of any creditor of or person interested in said estate or fund.

(HENRY JAMES.)

Sworn to before me, this }
(15th) day of (October, 1916.) }

(JOHN JONES,)

Notary Public,
(New York) County.

Schedules to be Included in Account of Proceedings

SCHEDULE A

Account No. 459531, Seaman's Bank for Savings, Pearl and Wall Streets, Borough of Manhattan, City of New York, including interest to July 1, 1914.....

Interest on above account from July 1, 1914, last interest date, to August 16, 1914, date of decedent's death..

Bond dated February 10, 1912, payable to decedent for \$5,000, executed by Stanley Stone, and

Mortgage securing the same recorded in the office of the Register of the County of Bronx in Liber —, Page — of Mortgages on — day.....

Certificate No. N615 for 5 shares of the common stock of Lehigh Valley R. R. Co. standing in the name of deceased. Appraised at the value of.....

Certificate No. 10 for 50 shares of the capital stock of the Acme Realty Company. Appraised at the value of.....

Certificate No. M210 of the corporate stock of the City of New York with coupons to and including July, 1916, attached. Appraised at the value of.....

(AUGUST MAYER,)
Petitioner.

SCHEDULE B

Five shares of the common stock of the Lehigh Valley R. R. Co., appraised at..... \$450 00

Sold by me at public sale at the then market price for.. 390 00

Loss \$160 00

Schedules

Ten shares of the capital stock of Acme Realty Co. were not sold by me for the reason that after diligent inquiry I was unable to find a purchaser for same. Said Acme Realty Company is a privately owned corporation, capitalized for \$10,000, the stock being held entirely by deceased and his sons.

(AUGUST MAYER,)

Petitioner.

SCHEDULE C

<i>New York Law Journal, publication of citation in matter of probate of will — Voucher No. 1</i>	<i>\$12 30</i>
<i>Charles Stumpf, 600 Westchester Ave., Borough of the Bronx, City of New York, funeral bill — Voucher No. 2</i>	<i>178 00</i>
<i>S. J. Kracke, 3587 Broadway, Borough of Manhattan, City of New York, flowers — Voucher No. 3</i>	<i>14 00</i>
<i>Dr. Frederic Pfletschinger, 557 West 156th St., Borough of Manhattan, City of New York, medical services — Voucher No. 4</i>	<i>2 00</i>
<i>Minister for funeral services</i>	<i>5 00</i>
<i>Hugo Levy, 37 Liberty St., Borough of Manhattan, City of New York, special guardian on probate — Voucher No. 5</i>	<i>15 00</i>
<i>The German Society of the City of New York, 147 Fourth Ave., Borough of Manhattan, City of New York, certified translation — Voucher No. 6</i>	<i>10 00</i>
<i>Adolph & Henry Bloch, 99 Nassau St., Borough of Manhattan, City of New York, legal services — Voucher No. 7</i>	<i>100 00</i>
<i>George Schwegler, 1613 First Ave., Borough of Manhattan, City of New York, appraising jewelry for transfer tax — Voucher No. 8</i>	<i>3 00</i>
<i>Adolph Henry, 109 Nassau St., Borough of Manhattan, City of New York, legal services for accounting — Voucher No. 9</i>	<i>25 00</i>
<i>Total</i>	<i>\$364 30</i>

(AUGUST MAYER,)

Petitioner.

Schedules

SCHEDULE D

None.

(AUGUST MAYER,)

Petitioner.

SCHEDULE E

\$500 advanced to the auxiliary committee of Louise Stein, an incompetent person, to pay for her support and maintenance.

(AUGUST MAYER,)

Petitioner.

SCHEDULE F

AUGUST MILLER, residuary legatee, residing at 119 Shepherd Avenue, Borough of Brooklyn, City of New York.

THEODORE SPENGLER, residuary legatee, residing at Durlach, Empire of Germany.

ANNA MARIE STEIN, an incompetent, residuary legatee, residing at Frankfurt am Main, and of whom deponent is informed Adolph Buhlmann, of Neue Kräme No. 9, Frankfurt am Main, Empire of Germany, has been appointed committee.

LOUISE STEIN, an incompetent, residuary legatee, residing at Heilund-Pflegeanstalt, Weisloch near Heidelberg, Empire of Germany, and of whom deponent is informed Ludwig Schwenn, of Sinsheim, Empire of Germany, has been appointed committee.

(AUGUST MAYER,)

Petitioner.

SCHEDULE G

CHARLES WHITE of 287 Broadway, Borough of Manhattan, City of New York, has served upon petitioner a power of attorney claimed to have been executed by Adolph Buhlmann, residing at Neue Kräme No. 9, Frankfurt am Main, Empire of Germany, "as trustee (Pfleger) of Anna Stein, an insane person," dated July 2, 1915, and said Charles White claims to be entitled to receive the monies on behalf of said Adolph Buhlmann, as trustee (Pfleger) of Anna Stein, an insane person.

(AUGUST MAYER,)

Petitioner.

Petition

FORM No. 447

Petition for Compulsory Accounting *

SURROGATES' COURT,
County of (*New York.*)

In the Matter of the Application for a
Compulsory Accounting in the Estate
of
(*HENRY ENO,*)
Deceased.

To the Surrogates' Court of the County of (*New York:*)

The petition of (*Sarah Eno,*) residing at (*No. 48 West 50th St., Borough of Manhattan, City and State of New York,*) respectfully states:

That your petitioner (*is the widow and residuary legatee*) of (*Henry Eno,*) deceased, who at the time of (*his*) death was a resident of (*No. 48 West 50th St., Borough of Manhattan, City and State of New York;*)

That (*by said Last Will and Testament your petitioner is the sole residuary legatee under the Will of said decedent.*)

That letters (*testamentary*) on the estate of said deceased were on the (*21st*) day of (*September, 1915,*) granted by the Surrogate of the County of (*New York*) to (*Abraham Bohm,*) who resides at (*No. 48 West 83rd St., Borough of Manhattan, City and State of New York.*)

That there are no other persons than those above mentioned interested in this proceeding.

That more than (*one year*) has elapsed since (*his*) appointment, and the said (*Abraham Bohm*) has not (*had his accounts judicially settled and allowed.*)

YOUR PETITIONER THEREFORE PRAYS that a citation issue requiring the (*said Abraham Bohm*) to show cause why

* The petition must substantially set forth the facts upon which the jurisdiction of the court depends to entertain the application and grant the relief asked for. [Sec. 2521 C. C. P.] See note p. 898.

Waiver of Citation

(*he*) should not render and have judicially settled (*his*) account of proceedings as such (*Executor of*) said (*Henry Eno.*)

Dated, (*September 25, 1916.*)

(*SARAH ENO,*)

Petitioner.

(Verification)

FORM No. 448

Waiver of Citation on Accounting

SURROGATES' COURT,

County of (*New York.*)

In the Matter of the Judicial Settlement
of the Account of Proceedings of

(*JOHN SMITH,*)

As Executor of

(*HENRY WILSON,*)

Deceased.

To the Surrogates' Court of the County of (*New York:*)

I, (*Mary Wilson,*) residing at (*No. 16 West 16th Street, Borough of Manhattan, City and State of New York,*) the undersigned being a person interested as (*a legatee*) in the estate or fund of (*Henry Wilson, deceased,*) do hereby appear and waive the issue and service of a citation in the above-entitled matter, and consent that a decree be made settling the account of said (*John Smith, as Executor, etc., of Henry Wilson, deceased.*)

(*MARY WILSON.*)

Dated (*the 15th*) day of }
(*September, 1916.*) }

STATE OF NEW YORK, } ss.:
County of (*New York,*) }

* BE IT KNOWN, that on the (*15th*) of (*September,*) one thousand nine hundred and (*sixteen,*) before me (*Arthur Bryant,*) a (*Notary Public*) in and for the

* If acknowledgment taken outside the State, certificate of Notary's authority and of the genuineness of his signature must be attached. See p. 805.

Citation

State of (*New York*,) duly commissioned and sworn, dwelling in the (*Borough of Manhattan, City, County and State of New York*,) personally came and appeared (*Mary Wilson*,) to me personally known, and known to me to be the same person described in and who executed the above waiver and consent, and (*she*) acknowledged the same to be (*her*) act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal of office, the day and year last above written.

[Notarial
Seal]

(*ARTHUR BRYANT*,)

Notary Public, (*New York*) County.

FORM No. 449

Citation on Accounting

THE PEOPLE OF THE STATE OF NEW YORK, BY THE GRACE OF GOD, FREE AND INDEPENDENT.

To (*Theodore Sprager, Anna Marie Schultz, named in the Will as Anna Schultz, Louise Schultz, Adolph Spielman, as committee of Anna Marie Schultz and Gretchen Gluck*,) and to all persons interested as creditors, legatees, next of kin or otherwise, in the estate of (*Sophie Muller, also known as Sophie Moller*,) deceased, who at the time of (*her*) death resided at (*1023 Columbus Avenue, Borough of Manhattan, City and*) State of New York, send Greeting:

Upon the petition of (*August Muller*,) residing at (*No. 189 Flatbush Avenue, Borough of Brooklyn, City*) and State of New York.

You and each of you are hereby cited to show cause before the Surrogates' Court of (*New York*) County, held at (*the Hall of Records*,) in the County of (*New York*,) on the (*6th*) day of (*October, 1916*,) at (*half-past ten*) o'clock in the forenoon of that day, why the account of (*August Muller*,) as (*Executor of the Last Will and Testament of said deceased*,) should not be judicially settled.

 Designation of Person to Receive Citation

IN TESTIMONY WHEREOF, We have caused the Seal of the Surrogates' Court of the said County of (*New York*) to be hereunto affixed.

Witness, Honorable (*Robert Ludlow Fowler*), a Surrogate of our said County, at the County of (*New York*),
 [L. s.] the (19th) day of (*August*), in the year of our Lord one thousand nine hundred and (*sixteen*.)

(*DANIEL J. DOWDNEY*),

Clerk of the Surrogates' Court.

 FORM No. 450

Order Designating Person to Receive Citation on Behalf of Infant or Incompetent

At Chambers of the Surrogates' Court held in and for the County of (*New York*), at (*the Hall of Records*), in the County of (*New York*), on the (21st) day of (*August*), in the year nineteen hundred and (*sixteen*.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*.)

Surrogate.

In the Matter of the Judicial Settlement of the Account of Proceedings of (<i>AUGUST MULLER</i> , as <i>Executor</i> of <i>SOPHIE MULLER</i> , also known as <i>SOPHIE MOLLER</i> ,) Deceased.	}
---	---

Upon the petition of (*August Muller*, as *Executor*) of the estate of (*Sophie Muller*, also known as *Sophie Moller*), late of the County of (*New York*), deceased, and it appearing by the petition that (*Anna Marie Schultz*, named in the Will as *Anna Schultz*, and *Louise Schultz*, are incompetents,) and (*George Miller* and *Ralph Miller*) are infants (*under the age of 14*.)

IT IS ORDERED that a copy of the citation herein be also

Order for Publication of Citation

delivered to and left with (*William E. Pratt,*) Esq., Counsellor-at-Law, of (*The City of New York,*) in behalf of said (*incompetents and infants*) at least eight days before the return day of said citation, and that the service of said citation shall not be deemed complete until such delivery.

(*ROBERT LUDLOW FOWLER,*)

Surrogate.

FORM No. 451

Order for Publication of Citation on Accounting

At Chambers of the Surrogates' Court held in and for the County of (*New York,*) at (*the Hall of Records,*) in the County of (*New York,*) on the (*1st*) day of (*September,*) in the year one thousand nine hundred and (*sixteen.*)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER,*)

Surrogate.

In the Matter of the Judicial Settlement of the Account of Proceedings of (<i>JOHN BROWN,</i>) as (<i>Executor</i>) of (<i>NATHAN JONES,</i>) Deceased.	}
--	---

Upon filing the verified petition (*John Brown,*) as (*Executor*) of (*Nathan Jones,*) deceased, late of the County of (*New York,*) by which the petitioner has made proof to my satisfaction that (*Henry Ames and Michael Ivins,*) legatee(s) or next of kin of said (*Nathan Jones,*) deceased, and that (*they are*) not resident(s) of this State, and that personal service of the citation herein cannot with due diligence be made upon (*them*) within the State, and by which said petition the petitioner has also made proof to my satisfaction that there (*are*) other legatees or next of kin of said deceased, whose names and post office addresses are unknown, and cannot after diligent inquiry be ascertained by the petitioner, and also that (*Thomas Garvey, if he be living; if he be dead, his widow, heirs-at-law and next of kin, executor or administrator, is a*) legatee or next of kin of said deceased, and that (*their*)

Order for Publication of Citation

post office addresses (*are*) unknown and cannot after diligent inquiry be ascertained by the petitioner.

NOW, on motion of (*John Wise*,) of counsel for the said (*John Brown*,) petitioner,

ORDERED, that the service of the citation in the above entitled matter, upon the aforesaid persons, viz.: (*Henry Ames, Michael Ivins, and Thomas Garvey, if he be living; if he be dead, his widow, heirs-at-law, and next of kin, executor or administrator*,) be made by publication thereof in (*two*) newspaper(s), to wit: in the (*New York Law Journal*,) published in the County of (*New York*,) and in the (*Star*,) published in the County of (*New York*,) once a week for four successive weeks; or, at the option of the petitioner, by delivering a copy of the citation to the above-named persons, in person without the State.

AND IT IS FURTHER ORDERED AND DIRECTED, That on or before the day of the first publication, the petitioner deposit in the post office at the County of (*New York*,) (*two*) cop(ies) of the citation, each contained in a securely closed post-paid wrapper, directed to the following person(s) respectively, at the place(s) designated below:

(*Henry Ames, 19 Liberty Street, Chicago, Ill.*)

(*Michael Ivins, Gravity, Alamoosa County, Iowa.*)

AND IT IS FURTHER ORDERED, That service of citation in the above-entitled matter upon those persons whose names and places of residence are unknown, and cannot after diligent inquiry be ascertained by the petitioner herein, to wit: (*Thomas Garvey*,) whose place of residence (*is*) unknown, and cannot after diligent inquiry be ascertained by the petitioner herein, be made by publication thereof in (*two*) newspaper(s), to wit: in the (*New York Law Journal*,) published in the County of (*New York*,) and in the (*Star*,) published in the County of (*New York*,) once a week for four successive weeks; or, at the option of the petitioner, by delivering a copy of the citation to the above-named person in person without the State.

And I being satisfied by the said petition that the petitioner cannot with reasonable diligence ascertain a place or places where the said (*Thomas Garvey*) would probably receive matter transmitted through the post office, hereby dispense with the deposit of any papers therein.

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

Affidavit of Service of Citation

FORM No. 452

**Affidavit of Service of Citation on Adults, Infants, Incompetents and
By Mailing**

SURROGATES' COURT,
County of (*New York.*)

In the Matter of the Judicial Settlement
of the Account of Proceedings of
(*AUGUST MULLER, as Executor*)
of (*SOPHIE MULLER, also known*
as SOPHIE MOLLER,) Deceased.

STATE OF NEW YORK, }
County of (*New York.*) } ss.:

(*Eugene Fisher,*) of (*the Borough of The Bronx, City and State of New York,*) being duly sworn, says: That he is over the age of eighteen years; that he made due service of the annexed citation in the above-entitled special proceeding on the persons named below, whom deponent knew to be the persons mentioned and described in said citation, by delivering to and leaving with each of them a true copy of said citation, as follows: (*On the 24th day of August, 1916, on Carl Lohman, at No. 299 Broadway, Borough of Manhattan, City and State of New York; on William E. Pratt, the person designated to receive citation on behalf of Anna Marie Schultz and Louise Schultz, incompetents, at No. 299 Broadway, Borough of Manhattan, City and State of New York; on the 30th day of August, 1916, on Baron Hans von Ungelter, Consul of the German Government at the City of New York, at No. 11 Broadway, Borough of Manhattan, City and State of New York; on the 23d day of August, 1916,*) which was before the date of the first publication of the citation herein, he deposited in the General Post Office at (*the Borough of Manhattan, City, County*) and State of New York, (*five*) (5) sets of copies of the citation herein, dated the (*19th*) day of (*August, 1916,*) in the above-entitled special proceeding, contained in securely closed post-paid wrappers respectively directed to each

Affidavit of Regularity

of the several persons hereinafter named, at the places and addresses stated below:

(*Theodore Sprager, Durlach, Empire of Germany.*)

(*Anna Marie Schultz, Frankfurt am Main, Empire of Germany.*)

(*Louise Schultz, Heil-und-Pflegeanstalt, Weisloch near Heidelberg, Empire of Germany.*)

(*Adolph Spielman, Committee of Anna Marie Stein, Neue Kräme No. 9, Frankfurt am Main, Empire of Germany.*)

(*Ludwig Stein, Committee of Louise Schultz, Sinsheim, Empire of Germany.*)

(*EUGENE FISHER.*)

Sworn to before me this }
(5th) day of (*September, 1916.*) }

(*BENJAMIN BYER,*)

Notary Public,

(*New York*) County.

[Attach affidavit of publisher showing publication of citation as directed in order with copy of published citation attached.]

FORM No. 453

Affidavit of Regularity—Accounting

SURROGATES' COURT,

County of (*New York.*)

In the Matter of the Judicial Settlement
of the Account of (*THE GERMAN
SOCIETY OF THE CITY OF
NEW YORK, as Sole Surviving
Executor*) of (*ANTON WANSCH,*)
Deceased.

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*George Bert,*) being duly sworn, says that he is (*associated with Messrs. Dunn & Dunn, the attorneys for the Executor*) herein. That all the parties to this proceeding have been duly

Affidavit of Regularity

cited or have duly waived the issuance and service of a citation, approved the accounts filed herein and consented to the entry of a decree approving and settling the same, in the manner and form following, to wit:

I. By service of a copy of the citation issued herein upon the following persons, in the manner prescribed by Sections 2525 and 2530 of the Code of Civil Procedure, as more fully appears by the proof of service thereof, made in the manner and form prescribed by law, and filed herein on the (27th) day of (November, 1915,) viz.: On

Name	When	Where
(Elizabeth Karr)	(October 29, 1915)	(No. 305 East 85th street, Borough of Manhattan, City of New York.)
(Elizabeth Karr, as Admz., etc., of Est. of John Wansch, deceased)	(October 29, 1915)	(No. 305 East 85th street, Borough of Manhattan, City of New York.)
(Arthur Karr, infant over the age of 14 years)	(October 29, 1915)	(No. 305 East 85th street, Borough of Manhattan, City of New York.)
(Bronx National Bank)	(October 30, 1915)	(No. 389 East 149th street, Borough of The Bronx, City of New York.)
(Mary Ownet)	(November 1, 1915)	(No. 171 Tenth avenue, Borough of Manhattan, City of New York.)
(Simon Frost)	(November 3, 1915)	(No. 351 East 161st street, Borough of The Bronx, City of New York.)

II. By service thereof without the State, or by publication in pursuance of an order made herein on the (18th) day of (October, 1915,) under Sections 2526 and 2529 of the Code of Civil Procedure, as more fully appears by the proof of service thereof, made in the manner prescribed by law and filed herein on the (27th) day of (November, 1915,) viz.: On (Johann Bunner, Berg Rheinphalz, Empire of Germany;) and (Elizabeth Deutch, No. 38 Poplar Avenue, Hackensack, State of New Jersey.)

III. Personally or by attorney by duly executed waivers of the issuance and service thereof, containing an approval of the account filed herein and a consent to the entry of a decree approving and settling the same, and filed herein on the (27th) day of (November, 1911,) by (Adolph Frick, 16 Palisade Avenue, Hoboken, N. J.)

IV. That no notice of appearance has been filed herein, [except by]

Decree

* That all of the persons named above are of full age and sound mind, excepting those hereinbefore stated to be otherwise, and comprise all the parties, as deponent verily believes, who have any interest in this proceeding.

(GEORGE BERT.)

Sworn to before me this }
 1 (6th) day of (January, 1916.) }

(MORRIS MAY,)

Notary Public,

(New York) County.

FORM No. 454

Decree on Accounting

At Chambers of the Surrogates' Court, held in and for the County of (New York,) at the (Hall of Records,) in the County of (New York,) on the (first) day of (September,) in the year one thousand nine hundred and (sixteen.)

PRESENT:

Hon. (ROBERT LUDLOW FOWLER,)

Surrogate.

In the Matter of the Judicial Settlement
 of the Account of Proceedings of
 (JOHN GRAY, HENRY WHITE and
 JAMES BLACK,)

As Execut(ors) of the Last Will and
 Testament of

(JOHN BROWN,)

Deceased.

(John Gray, Henry White and James Black,) as (Executors) of (the Last Will and Testament of John Brown,) deceased, late of (No. 16 East 21st St., Borough of Manhattan, City and State

* Where a person cited is an infant, a lunatic, an habitual drunkard, or for any cause mentally incapable adequately to protect his rights, it must so appear in the foregoing affidavit. The age of the infant must also be stated.

Decree

of *New York*,) having heretofore filed a petition, verified the (1st) day of (*August*, 1916,) in which application was made to the Surrogate of the County of (*New York*,) for a judicial settlement of the account of such (*Executors*) and a citation having been thereupon issued, pursuant to statute, directed to all persons interested in the estate or fund of said deceased, citing them to show cause before the said Surrogate, at his office in the County of (*New York*,) on the (10th) day of (*August*, 1916,) at (ten thirty) o'clock in the (fore)noon of that day, why the account of said (*Executors*) should not be judicially settled, and the said citation having been returned with proof of the due service thereof on (*Elizabeth Henry, as Administratrix, etc., of the estate of John Henry, deceased; Kate Mahon, Albert Smith; Henry Aide and John Jones, as Testamentary Trustees of Kate Mahon; Anna White, an infant over the age of fourteen years; Jane Gray, the person with whom said infant resides; William White, as Testamentary Guardian of Anna White, an infant; Arthur Henry, an infant under the age of fourteen years; Leslie Tompkins, the person designated to receive citation on behalf of the infant Arthur Henry.*)

The following persons in interest have waived the issuance and service of citation, and consent that a decree be made settling the account as filed, to wit: (*William Green*,) and the said (*Executors*) having appeared on the return day of said citation and, also, (*Leslie Tompkins, the person designated to receive citation on behalf of Arthur Henry, an infant; William May, as Testamentary Guardian of Anna White, an infant*,) and there being no other appearances, and the said (*Executors*) having rendered (*their*) account under oath, before the said Surrogate; and the said account having been filed, and (*Leslie Tompkins having been duly appointed the Special Guardian of Arthur Henry, an infant over the age of fourteen years, and he having duly filed his report herein as such Special Guardian on the 26th day of August, 1916, wherein he finds said proceedings correct insofar as they affect the interests of his ward*,) and the said matter having been duly adjourned to this day, the said surrogate, after having examined the said account, now here finds the state and condition of the said account to be as stated and set forth in the following summary statement thereof, to wit:

A SUMMARY STATEMENT of the account of (*John Gray, Henry White and James Black*,) as (*Executors of the Last Will*

Decree

and Testament of John Brown,) deceased, made by the Surrogate as judicially settled.

The said (*Executors are*) chargeable as follows:

With amount as per schedule	A.....	(\$140,000)	
“	“	B.....	(200)
			(\$140,200)

The said (*Executors are*) credited as follows:

With amount as per schedule	C.....	(\$2,200)	
“	“	D.....	(700)
“	“	E.....	(7,000)
			(9,900)
			(\$130,300)

leaving a cash balance in (<i>their</i>) hands of.....	(\$60,000 00)
(<i>and mortgages of the value of</i>).....	(70,300 00)

Total.....	(\$130,300 00)
------------	----------------

And it appearing that the said (*Executors have*) fully accounted for all the moneys and property of the estate or fund of said deceased, which have come into (*their*) hands as such (*Executors*) and (*their*) account having been adjusted by the said Surrogate, and a summary statement of the same having been made as above and herewith recorded, it is hereby ordered, adjudged and decreed, that the said account be and the same is hereby judicially settled.

And it is further ordered, adjudged and decreed, that out of the balance so found, as above, remaining in the hands of the said (*Executors*) retain the sum of (*four thousand seven hundred seventy-six*) dollars and (*no*) cents (\$4,776.00) for the commissions to which (*they are*) entitled on this accounting; and that (*they*) retain the sum of (*one hundred*) dollars and (*no*) cents (\$100.00) for (*their*) costs and disbursements on this accounting; and it is further

ORDERED, ADJUDGED AND DECREED, that out of the balance then remaining in the hands of the said (*Executors, they*) pay to (*Leslie J. Tompkins, Special Guardian of Arthur Henry,*) the sum of (*fifty*) dollars (\$50,) (*twenty-five*) dollars (\$25)

Decree

(thereof to be paid out of the funds of the estate herein and twenty-five dollars (\$25) out of the distributive share of his ward, Arthur Henry, as and for compensation for his services as Special Guardian herein;) and it is further

ORDERED, ADJUDGED AND DECREED, that out of the balance then remaining in the hands of the said (*Executors, they*) pay to (*Henry Aide and John Jones, as Trustees of Kate Mahon, the sum of eighteen thousand dollars (\$18,000)*), in full payment of (*the balance of the distributive share*) to which (*she*) is entitled on this accounting; and it is further

ORDERED, ADJUDGED AND DECREED, that out of the balance then remaining in the hands of said (*Executors, they*) pay to (*Albert Smith*) the sum of (*one thousand*) dollars (\$1,000) in full payment of (*the legacy,*) to which (*he*) is entitled under the ("*Fourth*" clause of the Will;) and it is further

ORDERED, ADJUDGED AND DECREED, that out of the balance then remaining in the hands of said (*Executors, they*) pay to (*William May, as Testamentary Guardian of Anna White, an infant,*) the sum of (*twenty-six thousand*) dollars (\$26,000,) as and for the (*distributive share*) to which (*she*) is entitled on this accounting; and it is further

ORDERED, ADJUDGED AND DECREED, that out of the balance then remaining in the hands of said (*executors, they assign, transfer, set over and deliver unto Elizabeth Henry, as administratrix, etc., of John Henry, deceased, bond and mortgage in the sum of ten thousand dollars (\$10,000) made by Carl Henry and Kate, his wife, to Max Loeb, recorded in the office of the Register of the County of New York in section 5, Liber 197, page 286, indexed under Block 1347 on the Land Map of the City of New York,*) being the (*balance of the residuary estate*) to which (*the estate of her decedent*) is entitled on this accounting; and it is further

ORDERED, ADJUDGED AND DECREED, that out of the balance then remaining in the hands of said (*executors, they*) pay the sum of (*five thousand*) dollars (\$5,000) in full payment of the (*legacy of Arthur Henry, an infant,*) to which (*he*) is entitled on this accounting, to (*the general guardian of said infant when appointed, or in default of the appointment of such general guardian within fifteen days from the signing of this decree, by paying and delivering the same to and depositing it*

Decree

with the Chamberlain of the City of New York, to be held, managed, invested, collected, reinvested and disposed of by him for the benefit of the said infant;) and it is further

ORDERED, ADJUDGED AND DECREED, that out of the balance then remaining in the hands of the said (*executors they assign, transfer, set over and deliver unto William Green the bond and mortgage in the sum of sixty thousand*) dollars (\$60,000) made by Isaac May to John Esty, dated June 1, 1902, recorded in the office of the Clerk of the County of Westchester on the 2d day of June, 1902, in Liber 26 of Mortgages, at page 4, and pay to him the sum of five thousand and seventy-four and 00/100) dollars (\$5,074.00), making a total of (*sixty-five thousand and seventy-four and 00/100*) dollars (\$65,074.00), the amount of the (*residuary estate*) to which he is entitled on this accounting; and it is further

ORDERED, ADJUDGED AND DECREED, that upon making the payments above directed to be made, and in compliance with all matters in this decree mentioned, the said (*executors*) he, and (*they*) hereby are, discharged as such executors of and from all liability herein as to matters embraced in said account.

(ROBERT LUDLOW FOWLER,)

Surrogate.

Bill of Costs

FORM No. 455

Bill of Costs—Accounting*

SURROGATES' COURT,
County of (*New York.*)

In the Matter
of the
Judicial Settlement of the Account of
(*HENRY SLOANE, as Executor of*
and Under the Last Will and Testa-
ment of WILLIAM WILLIAM,)
Deceased.

COSTS			DISBURSEMENTS		
Costs pursuant to section 2746 of the Code of Civil Procedure...			For Serving Citation on two parties	\$ (3	00)
Contest	\$ (70	00)	" Publication Citation (<i>New York Law Journal</i>)	(12	60)
No contest			" Publication Citation (<i>New York Commercial</i>)	(25	50)
2 days occupied in the trial or hearing, less two, and less adjournments	(20	00)	" Referee's Fees		
Motions for New Trial			" Appraiser's Fees		
Allowance to accounting party under section 2747, Code of Civil Procedure, viz.:			" Stenographer's Fees		
Days occupied in trial or hearing, less adjournments			" Affidavits and Acknowledgments	(1	00)
3 days necessarily occupied in preparing account	(30	00)	" Postage		
Days necessarily occupied in otherwise preparing for trial			" Certified Copies	(2	50)
			" Certified Copy Decree		
			" Satisfaction of Decree		
			" Certificate of Filing Satisfaction		
			" Necessary Copies of Papers as follows:		
TOTAL COST AND ALLOWANCE	\$ (120	00)	" Attendance of Witnesses	(1	24)
DISBURSEMENTS	(46	74)	(<i>Henry Jones, 2 das., 3 miles</i>)		(90)
			(<i>John Doe, 1 day, 6 miles</i>)		
TOTAL	\$ (166	74)		\$ (46	74)

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*WILLIAM BLAU,*) being duly sworn, says, that he is (*associated with Henry Smith,*) the attorney and counsel for (*Henry Sloane, executor*) in the above-entitled proceeding; that the foregoing disbursements have been actually made or will be

* See Sections 2746 and 2747 of the Code of Civ. Proc., and Rule 20 of Surrogates' Court, N. Y. County.

Affidavit as to Disbursements

necessarily incurred therein, by or in behalf of the said (*executor.*) That such disbursements are correctly stated, and are for reasonable and necessary expenses in this proceeding.

Deponent further says that the time stated in the foregoing bill of costs as having been occupied as therein specified was actually, substantially and necessarily so occupied and employed in this matter by deponent, and that the time occupied on each day in the rendition of the services aforesaid, and their nature and extent in detail, are, as hereinafter set forth, opposite the date of the rendition of the services and under the appropriate head of particular class of services rendered in the above-entitled proceeding.

That no compensation has been paid or given out of the funds of the estate of the said deceased for or on account of the services specified herein.

(*WILLIAM BLAU.*)

Sworn to before me, this }
(15th) day of (*September*, 1916.) }

(*ROBERT GREER,*)

Notary Public,

(*New York*) County.

TRANSFER TAX

A rebate of *six* per cent. of the tax may be obtained if it is paid, or a sufficient deposit to cover the tax is made with the Comptroller within six months after the death of the decedent.

Interest at the rate of *six* per cent. *per annum* on the amount of the tax is charged if the tax is paid between the twelfth and eighteenth months after decedent's death.

Interest of *ten* per cent. *per annum* of the tax is added if same is not paid within eighteen months after date of death. The Surrogate may for proper cause reduce this interest to six per cent.

Interest at *ten* per cent. will again be charged if delay in payment continues after proper cause for delay has been removed.

The tax is assessed upon the basis of the law as it existed at the time of transfer of the property, notwithstanding any subsequent changes therein.

Outline of Procedure

1. Draw and file petition and order for designation of transfer tax appraiser.
2. Get certified copy of order appointing appraiser.
3. Prepare affidavit and schedules for transfer tax appraiser.

In New York and Bronx and some other counties, printed forms are provided by the Comptroller. It is best to use these. In addition to this, affidavits of appraisal made by competent persons will be required to show value of real property, jewelry and any property where expert opinion may be needed to guide transfer tax appraiser.

4. File with transfer tax appraiser certified copy of order designating him, original and two copies of affidavit and schedules and copy of will; and affidavits of expert appraisers, if needed.
5. Transfer tax appraiser fixes date of hearing and notifies all parties interested. Court appoints special guardians for any infants.
6. Attend on hearing and furnish any further proof or testimony required.

Assessing Without Appraisal

7. Report of appraiser filed.
8. Prepare and enter order assessing tax or exempting estate from tax.
9. Pay tax and obtain Comptroller's receipt in duplicate.
If real estate included in taxed estate, file duplicate receipt in County Clerk's office, where same is located.
If tax paid out of estate and charged to legatees or devisees, file original receipt with account. Otherwise deliver original receipt to executor.

FORM No. 456

Notice of Motion to Assess Transfer Tax Without Appraisal —
Resident Decedent

SURROGATES' COURT,
County of (*New York*.)

In the Matter
of the
Appraisal Under the Transfer Tax Law
of the Estate of (*JOHN M. CAR-*
ROLL,) Deceased.

Sir:

PLEASE TAKE NOTICE, that upon the annexed petition of (*James Carr, administrator of John M. Carroll*,) deceased, duly verified the (4th) day of (*November, 1914*,) the undersigned will move this court at a term thereof appointed to be held in and for the County of (*New York*) at the (*Hall of Records, Borough of Manhattan, City of New York*,) on the (20th) day of (*November, 1914*,) at (*ten-thirty*) o'clock in the (*fore*)noon of that day, or as soon thereafter as counsel can be heard for an order assessing the tax upon the transfer of the property of which said decedent died seized and possessed and referred to in said

Assessment Without Appraisal — Petition

petition, under the acts in relation to taxable transfers of property.

Dated, (*New York, November 12, 1914.*)

Yours, etc.,

(*HENRY BLOCK,*)

Attorney for Administrator,

Office & Post-office Address,

(*No. 19 Nassau Street,*)

(*Borough of Manhattan,*)

(*City of New York.*)

To

Comptroller of the State of New York.

FORM No. 457

**Petition for Order Assessing Transfer Tax Without Appraisal —
Resident Decedent**

SURROGATES' COURT,

County of (*New York.*)

In the Matter of the Appraisal Under the Transfer Tax Law of the Estate of (<i>JOHN M. CAR-</i> <i>ROLL,</i>) Deceased.

The petition of (*James Carr*) respectfully shows to this court as follows:

That (*John M. Carroll,*) the above-named decedent, died a resident of the State of (*New York*) on the (*3d*) day of (*December, 1911,*) at (*No. 6 West Eighth Street, Borough of Manhattan, City, County and State of New York,*) and at the time of his death was a resident of (*No. 6 West Eighth Street, Borough of Manhattan, City of New York.*) That decedent [left no last will and testament and] that letters (*of administration*) were duly issued by the said Surrogates' Court of the County of (*New*

Assessment Without Appraisal — Petition

York) on the (18th) day of (September, 1914,) to your petitioner, whose post-office address is (No. 45 West Eighth Street, Borough of Manhattan, City of New York.)

That as such administrator your petitioner is personally familiar with the affairs of said estate and property constituting the assets thereof, and their fair market value, and the debts, expenses and charges properly and legally allowable as deductions therefrom. That the decedent at the time of his death had no safe deposit box.

That the decedent at the time of his death owned the following personal property:

(Account No. 592415, Bank for Savings, 22d Street and 6th Avenue, Borough of Manhattan, City of New York, including interest to July 1, 1914)	(\$2,337 99)
(Account No. 510259, Emigrant Industrial Savings Bank, 49-51 Chambers Street, Borough of Manhattan, City of New York, including interest to July 1, 1914).....	(1,321 63)
(Account No. 380065, Greenwich Savings Bank, 16th Street and 6th Avenue, Borough of Manhattan, City of New York, including interest to July 1, 1914)	(3,385 00)
(Cash from estate of Catharine Carroll, deceased)	(400 00)
	(\$7,444 62)

That the deductions legally allowable and the debts of the decedent are as follows:

(Commissions of administrator).....	(\$157 36)
(Premium to bonding company).....	(35 00)
(Henry Block, legal services, including accounting, etc.)	(200 00)
	(392 36)
(Leaving a net estate of).....	(\$7,052 26)

That the said decedent died possessed of no silverware, jewelry, household furniture, personal effects, statuary, works of

Assessment Without Appraisal—Petition

art, paintings, pictures, books, bric-a-brac, horses, carriages, automobiles, promissory notes, bonds or mortgages, stocks and bonds, deposits in banks, trust companies or savings banks in decedent's own name or jointly or in trust for another, except as above set forth.

That no reversion fell in by reason of decedent's death, and no transfer or conveyance of real or personal property was made by decedent in contemplation of death, or to take effect at or after death, nor was the decedent given power of disposition of property, or appointment, by the will or deed of another.

That your petitioner has made due and diligent search for property of every kind, nature and description left by the decedent and has been able to discover only that above set forth and that no information of any other property of the decedent has come to his knowledge, and that he verily believes that decedent left no property, either real or personal, except as herein set forth.

That the following parties are interested in the estate of said decedent:

Comptroller of the State of New York.

(*James Carroll*,) your petitioner and (*brother*) of the decedent, whose post-office address is (*No. 45 West Eighth Street, Borough of Manhattan, City of New York.*)

That no party in interest herein is dead and that they are all of full age and sound mind.

WHEREFORE, your petitioner prays that an order may be made and entered determining the tax herein under the taxable transfer laws of the State of New York.

Dated, (*New York, November 4, 1914.*)

(*JAMES CARROLL*,)

Petitioner.

(Verification)

Petition for Appraiser — Resident

FORM No. 458

Petition for Designation of Transfer Tax Appraiser — Resident
DecedentSURROGATES' COURT,
County of (*New York.*)

In the Matter of an Application to Adjust the Transfer Tax Upon the Estate of (<i>JOHN DOR- ING,</i>) Deceased.	}
--	---

To the Surrogates' Court of the County of (*New York:*)The petition of (*James Smith*) respectfully shows:

First. That your petitioner is the (*sole executor named in the last will and testament of John Doring,*) deceased, and as such is a person interested in the estate of the said deceased.

Second. That the said decedent departed this life on the (1st) day of (*June, 1916,*) at (*No. 21 East 30th Street, Borough of Manhattan, City of New York;*) that the said deceased was a resident of (*No. 21 East 30th Street, Borough of Manhattan, City of New York.*)

Third. That letters (*testamentary*) on the estate of said deceased were, on the (5th) day of (*June, 1916,*) issued to your petitioner by the Surrogates' Court of the County of (*New York,*) and that his post-office address is (*No. 100 Madison Avenue, Borough of Manhattan, City of New York.*)

Fourth. That, as your petitioner is informed and believes, the transfer of the property of said decedent, or some portion thereof or some interest therein, is or may be subject to the payment of the tax imposed by law in relation to taxable transfers of property.

Fifth. That all persons who are interested in said estate and who are entitled to notice of all proceedings herein, and their post-office addresses, are as follows:

The Comptroller of the State of New York.

Petition for Appraiser — Resident

(James Smith, petitioner and sole executor, residing at No. 100 Madison Avenue, Borough of Manhattan, City of New York.)

(Jane Doring, widow, residing at No. 21 East 30th Street, Borough of Manhattan, City of New York.)

(New York Hospital, Amsterdam Avenue and 112th Street, Borough of Manhattan, City of New York.)

(Mary Roe, daughter, residing at No. 121 Lexington Avenue, Borough of Manhattan, City of New York.)

(Robert Roe, grandson, residing at No. 121 Lexington Avenue, Borough of Manhattan, City of New York.)

(Kate Doring, daughter-in-law, residing at No. 541 East 78th Street, Borough of Manhattan, City of New York.)

That all of the above named are of full age and sound mind, except:

(Robert Roe, who is an infant and was eleven years of age on the 1st day of May, 1916, and resides with his father, Albert Roe, at No. 121 Lexington Avenue, Borough of Manhattan, City of New York, and of whom no general or testamentary guardian has heretofore been appointed.)

That no previous application has been made for an order granting the relief prayed for in this petition.

That there are no persons, other than those herein mentioned, interested in this proceeding.

WHEREFORE, your petitioner prays that you will designate an appraiser, as provided by law, to fix, under Article X, Chapter 60 of the Consolidated Laws of 1909, and the acts amendatory thereof and supplemental thereto, the fair market value of the property which was of the above-named decedent, to declare the value of such interest or interests therein as may be subject to the payment of the transfer tax, to declare exempt from such tax such interest or interests as he may find to be exempt, and to do such other thing or things in the premises as he may be authorized to do, by virtue of his office under the said provision of law.

Dated, (New York, August 23, 1916.)

(JAMES SMITH,)

Petitioner.

(Verification)

Order Designating Appraiser — Resident

FORM No. 459

Order Designating Transfer Tax Appraiser

At a Surrogate's Court, held in and for the County of
(*New York*,) at the (*Hall of Records*) in the
(*Borough of Manhattan, City of New York*,) on the
(*23d*) day of (*August*, 1916.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*,)

Surrogate.

In the Matter of an Application to Adjust the Transfer Tax Upon the Estate of (<i>JOHN DOR-</i> <i>ING</i> ,) Deceased.
--

On reading and filing the petition of (*James Smith, executor*) of said decedent, I do hereby, pursuant to the requirement of section 230 of Article X of the Tax Law, direct (*Frank M. Bowers*,) Esq., one of the appraisers appointed by the State Comptroller under said statute, to fix under Article X, Chapter 60 of the Consolidated Laws of 1909, and the acts amendatory thereof and supplemental thereto, the fair market value of the property which was of the above-named decedent, to declare the value of such interest or interests therein as may be subject to the payment of the transfer tax, to declare exempt from such tax such interest or interests as he may find to be exempt, and to do such other thing or things in the premises as he may be authorized to do, by virtue of his office under the said provision of law.

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

Affidavit for Appraisal

FORM No. 460

Affidavit and Schedules for Transfer Tax Appraisal — Resident Decedent*

SURROGATES' COURT,
County of (*New York*.)

In the Matter
of the
Transfer Tax Upon the Estate of
(*JOHN DORING*,) Deceased.

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*JAMES SMITH*,) [administrator] (*executor*) of the estate of the above-named decedent, being duly sworn in this proceeding for the determination of the tax, if any, to be paid upon the assets of the said estate under the law in relation to taxable transfers of property, deposes and says:

I. That the said decedent died a resident of the County of (*New York, State of New York*,) on the (1st) day of (*June*, 1916,) [intestate,] leaving a last will and testament, a copy of which is herewith submitted; which was duly admitted to probate by the Surrogates' Court of (*New York*) County, on the (5th) day of (*June*, 1916,) and that letters [of administration] (*testamentary*) were duly issued by the said Surrogates' Court of (*New York*) County on the (5th) day of (*June*, 1916,) to this deponent, whose post-office address is (*No. 100 Madison Avenue, Borough of Manhattan, City of New York*.)

II. That as such [administrator] (*executor*) deponent is personally familiar with the affairs of said estate, the property constituting the assets thereof and their fair market value, and with the debts, expenses and charges properly and legally allowable as deductions therefrom. That the decedent at the time of (*his*) death had no safe deposit box except (*at Lincoln's Safe Deposit*

* This affidavit and schedules, with will, etc., in triplicate—one original and two copies—with one certified copy of the order appointing appraiser, should be filed with transfer tax appraiser.

Affidavit for Appraisal

Company, at 60 East 42d Street, Borough of Manhattan, City of New York.)

III. Schedule A1 sets forth each and every parcel of real estate in the State of New York of which decedent died seized and possessed, or in which he had any right, title or interest, and the liber and page of the record of the conveyance thereof; together with a statement of the mortgages and other encumbrances thereon at the date of death, giving the amount of such encumbrances and date, place, liber and page of record thereof. It also sets forth in the first marginal column the assessed valuation of said parcels and in second marginal column the estimated market value thereof (as appraised by a competent expert in real estate values, whose supplemental affidavit is herewith submitted.)

Schedule A2 sets forth all of the moneys left by the decedent at the time of (*his*) death, whether in (*his*) immediate possession, standing to his credit or in which he had any right, title or interest, in banks of deposit, savings banks, trust companies, or other institutions, whether individually or in trust for or jointly with any other person, giving also separately the accrued interest thereon, if any, down to the last interest day prior to decedent's death in the case of savings accounts, and down to the date of decedent's death in all other cases.

Schedule A3 sets forth all wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses, carriages, automobiles, boats, and any and all other personal chattels of whatsoever kind or nature, left by the decedent, together with the fairly estimated market value thereof (as appraised by a competent expert, whose supplementary affidavit is herewith submitted.) It also contains a statement of all bonds and mortgages held by decedent and of all claims due and owing decedent at the time of (*his*) death, and of all the promissory notes or other instruments in writing for the payment of money of which (*he*) died possessed, of whatsoever nature, with interest thereon, if any (except such as are included in the statement of the decedent's interest in a co-partnership or business set forth in Schedule A5) giving the face values and estimated fair market values thereof and if such estimated fair market values be less than the face value, setting forth in brief the reason for such depreciation as to each item. Said Schedule A3 also contains a statement of any and all moneys payable to the estate from life insurance policies carried by decedent.

Affidavit for Appraisal

Schedule A4 sets forth all the corporate stocks, bonds and accrued interest thereon to the date of decedent's death, or other investment securities owned by the decedent at the time of (*his*) death, with the market value thereof at such time, and in the case of unlisted corporate securities giving the State of incorporation of the corporation issuing the same, its capitalization, the value and nature of its assets, its liabilities, its surplus, the book value of its stock, the dividends paid, and any other facts which may be pertinent affecting the value of said securities, also the amount of any dividends declared on such stocks but unpaid at date of death.

Schedule A5 sets forth the interest of decedent at the time of (*his*) death in any co-partnership or business, a balance sheet of such business, and shows the nature and location thereof, the total capital employed, the gross profits, expenses and net profits, of the business for at least three years prior to decedent's death, and any other facts pertaining to such business as may be pertinent to a fair and just appraisal of decedent's interest in said business and the good-will thereof. (Submitted to the Appraiser herewith is a certificate and two copies thereof showing the amount of the decedent's interest in such business and good-will thereof, made by a competent accountant.)

Schedule A6 sets forth in itemized form, together with the fair market value thereof, any other property owned or left by decedent at the time of (*his*) death and not included in the preceding schedules.

IV. Schedule B1 sets forth the funeral expenses.

Schedule B2 sets forth the expenses of administration and counsel fees paid or estimated.

Schedule B3 sets forth the valid debts due and owing by decedent at the time of (*his*) death and allowed as just and fair by the [administrator,] (*executor*,) together with a separate list of such claims as have been contested or rejected by (*him*) (except liens and incumbrances upon real estate and except such as enter into the computation of decedent's interest in any co-partnership or business as set forth in Schedule A5).

Schedule B3 also sets forth all items claimed by the [administrator] (*executor*) as proper deductions herein, and not included in the prior schedules.

Affidavit for Appraisal

V. Schedule C sets forth all the property, real and personal, which passed at decedent's death by virtue of the exercise by (*him*) of any power of appointment vested in (*him*) by the will, deed or other instrument of another, together with the fair market value of each item thereof and a statement in brief of the source and derivation of such power, copies of which will, deed or other instrument are submitted herewith. Said Schedule C also sets forth the interest of decedent in any estate of another; and any property wheresoever situated of which decedent made any grant, bargain, sale or gift in contemplation of death or intended to take effect in possession or enjoyment at or after the death of decedent.

VI. Schedule D contains a statement of the names of all persons beneficially interested in this estate at the time of decedent's death, the nature of their respective interests, their relationship, if any, to the decedent, together with the ages at the time of decedent's death of all minors, annuitants and beneficiaries for life under decedent's will, if any. It also contains a statement showing which of the beneficiaries named in decedent's will, if any, died prior to decedent, the dates of their deaths, their survivors, and the relationship of such survivor to decedent.

VII. That deponent has made due and diligent search for property of every kind, nature and description left by the decedent, and has been able to discover only that set forth in Schedules A and C, and that no information of any other property of the decedent has come to (*his*) knowledge, and that (*he*) verily believes that decedent left no property except as therein set forth. That all the sums claimed as deductions in Schedule B are lawful, just and fair, that to the best of deponent's knowledge, information and belief the decedent made no gift, grant or conveyance of any property, real or personal, in contemplation of death, or to take effect at or after death, except as may be so specifically set forth in the appropriate schedule.

Deponent further says that wherever in any of said schedules the word "none" has been written or wherever such schedule has been left blank, such word or omission is to be taken as

Affidavit for Appraisal — Schedules

equivalent to an affirmative allegation by deponent that the decedent left no property of the kind to which schedule relates.

(*JAMES SMITH,*)

Petitioner.

Sworn to before me, this }
(23rd) day of (*August, 1916.*) }

(*MARTIN HERBERT,*)

Notary Public, (*New York*) County.

Schedule A1

Real property

		[To be filled in by appraiser]
Assessed value		Value as appraised in
For year of decedent's	Estimated market	this proceeding
death	value	EQUITY

[Annex appraisal made by Expert Real Estate Appraiser, and if Mortgages exist, give liber and page of record, name of mortgagee, date of mortgage, amount of mortgage, rate of interest, date when payable, and amount of accrued interest to date of decedent's death.]

Schedule A2

Cash on hand and on deposit

	Value as appraised in this proceeding
Amount	

[Interest to last interest day preceding date of death should be included.]

Schedule A3

Personal chattels — bonds and mortgages, promissory notes, claims, insurance, etc.

	Value as appraised in this proceeding
Estimated market value	

[Interest accrued to date of death should be included.]

Schedule A4

Corporate Bonds and Stocks (including interest on bonds to date of death and stock dividends declared but unpaid.)

	Value as appraised in this proceeding
Estimated market value	

[Interest on all bonds to date of death and stock dividends declared but unpaid should be added; and prices of listed securities, and in case of close corporations and unlisted securities, statement of assets and liabilities and net earnings for 3 years prior to decedent's death, where no sales have been made should be given.]

Schedules

Schedule A5**Interest of decedent in any co-partnership or business, together with balance sheet and profit and loss statement**

	Estimated market value	Value as appraised in this proceeding
--	---------------------------	---

[Give statement of assets and liabilities as of date of death and, in addition, net profits for at least 3 years preceding date of death, and trial balances for same period.]

Schedule A6**Property left by decedent of whatever kind or nature not included in the foregoing sub-schedules**

	Estimated market value	Value as appraised in this proceeding
--	---------------------------	---

[Claims by the estate in litigation and any other property claimed should be stated.]

Schedule B1**Funeral Expenses**

		[To be filled in by appraiser]
	Claimed	Allowed in this proceeding

[If allowance is claimed for a monument this schedule should show whether same is contracted for.]

Schedule B2**Administration Expenses**

	Claimed	Allowed in this proceeding
--	---------	-------------------------------

[Commissions of administrator, executor or trustee should be separately stated.]

Schedule B3**Debts of decedent. Also deductions claimed and not included in the preceding sub-schedules**

	Claimed	Allowed in this proceeding
--	---------	-------------------------------

[Show what debts have been paid or are collectible and what claims are contested.]

Schedule C**Property passing by decedent's exercise of any power of appointment; Interest of decedent in any other estate; Property transferred by decedent in contemplation of death or to take effect at death**

	Estimated value	Value as appraised in this proceeding
--	-----------------	---

[Any transfers by way of gifts made prior to death under trust deeds or other instruments, all facts regarding property affected by power of appointment and all facts relating to property standing in the name of decedent and another jointly or in trust for another should be stated.]

Order Assessing Tax

Schedule D

Beneficiaries and their interests, relationship to deceased, etc.

[If will creates life estates, annuities or estates for term of years, give age of beneficiaries at date of decedent's death. State whether beneficiaries are living at date of appraisal.]

FORM No. 461

Order Assessing Transfer Tax — On Appraiser's Report

At a Surrogates' Court, held in and for the County of
(*New York*), at the (*Hall of Records*) in the (*Borough of Manhattan, City of New York*), on the
(*23d*) day of (*September, 1916*.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*),

Surrogate.

In the Matter of the Transfer Tax upon
the Estate of
(*JOHN DORING*),
Deceased.

On reading the report of (*Frank M. Bowers*), Esq., the appraiser, filed herein on the (*21st*) day of (*September, 1916*), wherein it appears that the said decedent died on the (*1st*) day of (*June, 1916*), and on motion of (*Henry Doty*), Attorney for the (*Petitioner*) herein, it is

ORDERED AND ADJUDGED that the cash value of the property referred to in said report, the transfer of which is subject to the tax imposed by the Act relating to taxable transfers, and the tax to which the said transfers are liable, are as follows:

Beneficiary	Relation	Amount of exemption	Cash value of interest	Tax assessed
<i>Jane Doring,</i>	<i>Widow,</i>	\$5,000.	\$10,000.	\$100.
<i>New York Hospital,</i>	<i>Legatee,</i>	500.	0.00	0.00
<i>Mary Roe,</i>	<i>Daughter,</i>	5,000.	5,000.	50.
<i>Robert Roe,</i>	<i>Grandson,</i>	500.	0.00	0.00
<i>Kate Doring,</i>	<i>Daughter-in-law,</i>	500.	1,000.	20.

(*ROBERT LUDLOW FOWLER*),

Surrogate.

Order of Exemption

FORM No. 462

Order of Exemption from Transfer Tax on Report of Appraiser

At a Surrogates' Court held in and for the County of
(*New York*,) at the (*Hall of Records*) in the (*Bor-*
ough of Manhattan, City of New York,) on the (*23d*)
day of (*September*, 1916.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*,)

Surrogate.

In the Matter of the Transfer Tax upon
the Estate of

(*JOHN EASTON*,)

Deceased.

On reading the report of (*Frank M. Bowers*,) Esq., the appraiser, filed herein on the (*21st*) day of (*September*, 1916,) wherein it appears that the said decedent died on the (*1st*) day of (*June*, 1916,) and on motion of (*Henry Desmond*,) Attorney for the (*Petitioner*) herein, it is

ORDERED AND ADJUDGED that the transfer of the property of which said decedent died seized and possessed, and referred to in said report, is exempt from tax under the act in relation to taxable transfers of property.

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

Notice of Motion to Exempt

FORM No. 463

Notice of Motion to Exempt Estate from Transfer Tax Without
Appraisal — Resident DecedentSURROGATES' COURT,
County of (*New York*.)

In the Matter of the Transfer Tax upon the Estate of (<i>CATHERINE CARR</i>), Deceased.
--

PLEASE TAKE NOTICE, that on the petition of (*James Carr*), dated and verified the (4th) day of (*November*, 1914,) [and the affidavit of, verified the day of], and on all other papers and proceedings herein, I will move this court, at chambers thereof, to be held in the (*Hall of Records, in the Borough of Manhattan*), City of (*New York*), County of (*New York*), on the (20th) day of (*November*, 1914,) at 10:30 o'clock, in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order exempting the estate of (*Catherine Carr*), deceased, from the tax imposed by the article of the Tax Law relating the taxable transfers of property.

Dated, New York, (*November 12th*, 1914.)(*HENRY BENDER*),

Attorney for Petitioner,

(90 *Nassau Street*),(*Manhattan, N. Y. City*.)

To

(*Lafayette B. Gleason*), Esq.,

(Attorney for) the State Comptroller,

(233 *Broadway, Borough of Manhattan*,*City of New York*.)

Motion to Exempt—Petition

FORM No. 464

Petition to Exempt Estate from Transfer Tax

SURROGATES' COURT,
County of (*New York*.)

In the Matter
of the
Transfer Tax upon the Estate of
(*CATHERINE CARR*.) Deceased.

To the Surrogates' Court of the County of (*New York*:)

The petition of (*James Carr*) respectfully shows:

First: That he is (*one of the executors of the last will and testament*) [administrator] of (*Catherine Carr*.) deceased; that said decedent died a resident of the State of New York on the (10th) day of (*September*, 1914,) [intestate] (*leaving a last will and testament, copy of which is hereto annexed, which was duly admitted to probate by the Surrogate's Court of the County of (New York,) on the (24th) day of (September, 1914,) and that Letters (Testamentary) [of Administration] were duly issued by the said Surrogate's Court of the County of (New York,) on the (16th) day of (September, 1914,) to your petitioner, whose post office address is (2 Rector Street, Borough of Manhattan,) City of (New York).*)

Second: That no order has been made herein appointing an appraiser.

Third: That as such [administrator] (*executor*.) deponent is personally familiar with the affairs of said estate, the property constituting the assets thereof and their fair market value and with the debts, expenses and charges properly and legally liable as deductions therefrom; that decedent at the time of (*her*) death had no safe deposit box; that to the best of deponent's knowledge, information and belief, there is no person better informed than deponent upon the said affairs of this estate.

Fourth: That Schedule A, hereunto annexed, sets forth fully and in detail all the personal property wheresoever situated, owned by the decedent, or in which said decedent had any right, title or interest at the time of (*her*) death, or which, by reason thereof, fell into or became part of the assets of this estate by reversion,

Motion to Exempt — Petition

remainder or otherwise. That decedent owned no real estate at the time of (*her*) death, and decedent made no gift, grant or conveyance in contemplation of death, or to take effect at or after death, and decedent had no power of appointment vested in (*her*) by the will or deed or other instrument of another.

That decedent left no money at the time of (*her*) death, either in his immediate possession, standing to his credit, or in which (*she*) had any right, title or interest, in banks of deposit, savings banks, trust companies, or other institutions, except as set forth in said Schedule A. That decedent left no wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses, carriages, automobiles, boats, or any other personal chattels of any kind or nature, no bonds or mortgages or claims due and owing decedent at the time of (*her*) death, and no promissory notes or other instruments in writing for the payment of money, except as stated in said Schedule A.

That decedent was in the employ of (*Star Insurance Company of 26 Broadway, New York City,*) and was not interested in any copartnership or business. That decedent carried no life insurance policy or policies payable to (*herself*) or (*her*) estate, but was insured in the (*Sun Life Insurance Company of New York City,*) for the sum of (\$1,000,) also insured in the (*Mutual Insurance Company of New York City*) for the sum of (\$2,000,) and that both policies were payable to (*James Carr, her husband,*) your petitioner, as beneficiary. That decedent owned no corporate stocks or bonds, or other investment securities, and no property of any kind or description except as set forth in said Schedule A.

Fifth: That Schedule B hereto annexed sets forth the funeral expenses, administration expenses and counsel fees paid or incurred in connection with the estate. That decedent left no debts or claims against the decedent. The Executors also claim to be allowed as a deduction herein their lawful commissions as Executors.

Sixth: That the only person beneficially interested in this estate at the time of decedent's death was and is your petitioner, (*James Carr, husband*) of decedent, who resides at (*431 West 70th Street, New York City,*) and that (*he*) is of full age and sound mind.

Seventh: That decedent left no property held by the decedent in trust for or jointly with another or others.

Order Exempting Without Appraisal

Eighth: That petitioner has made due and diligent search for property of every kind and description left by the decedent, and has been able to discover only that set forth in Schedule A, and that no information of other property of the decedent has come to (*his*) knowledge, and that (*he*) verily believes that the decedent left no property except as therein set forth.

That all the sums claimed as deductions in Schedule B are lawful, just and fair.

WHEREFORE, your petitioner prays that an order be made exempting the estate of (*Catherine Carr*) from the tax imposed by the article of the Tax Law relating to Taxable Transfers of Property.

Dated, (*New York, November 4th, 1914.*)

(*JAMES CARR,*)
Petitioner.

(Verification.)

FORM No. 465

Order Exempting Estate from Transfer Tax — Without Appraisal

At a Surrogates' Court, held in and for the County of
(*New York,*) at the (*Hall of Records*) in the (*Borough of Manhattan, City and County of New York,*)
on the (*17th*) day of (*December, 1914.*)

PRESENT:

Hon. (*JOHN P. COHALAN,*)
Surrogate.

In the Matter of the Transfer Tax upon the Estate of (<i>CATHERINE CARR,</i>) Deceased.
--

On reading and filing the Notice of Motion herein, dated the (*12th*) day of (*November, 1914,*) returnable on the (*20th*) day of (*November, 1914,*) and the petition of (*James Carr,*) duly verified the (*4th*) day of (*November, 1914,*) with due proof of

 Notice of Appeal to Surrogate

service thereof, praying for an order exempting the estate from tax under the acts in relation to taxable transfers of property, and after hearing (*Benjamin L. Blauvelt*,) of counsel, on behalf of said motion, and (*E. F. Boyle*,) attorney for the State Comptroller, appearing but not opposing.

NOW, on motion of (*Henry Bender*,) attorney for petitioner, it is

ORDERED AND ADJUDGED, that the transfer of the property of which said decedent died seized and possessed, referred to in said petition, is exempt from tax under the acts in relation to taxable transfers of property.

(*JOHN P. COHALAN*,)

Surrogate.

 FORM No. 466

Notice of Appeal to Surrogate from Order Assessing Tax

SURROGATES' COURT,

County of (*New York*.)

In the Matter of the Tax upon the Transfer of Property of (<i>HARMON ROE</i> ,) Deceased.

SIRS: You will please take notice, that (*Mary Roe*,) individually and as (*sole executrix*) of the above-named decedent, (*Harmon Roe*,) being dissatisfied with the appraisement herein of the property of the above-named decedent as made and set forth in the report of (*John V. Coggey*,) Esq., the appraiser herein, and with the order fixing and assessing the transfer tax in respect to the transfer of the property of the said decedent made and entered herein on the (*8th*) day of (*October*, 1914,) hereby appeals to the Surrogate of the said County of (*New York*) from the said appraisement and from the said order fixing and assessing the tax upon the following grounds: (*Set forth grounds, e. g.*).

First: That the said report of the appraiser bearing date the (*20th*) day of (*August*, 1914,) and filed on the (*29th*) day of (*September*, 1914,) did (*not allow as a deduction a debt of the*

Notice of Appeal to Surrogate

decedent of twelve hundred dollars, being the amount due from the decedent for rent of a cottage at Deal, New Jersey, which said amount was set forth in Schedule B3 of the affidavit for appraisal in the above-entitled proceedings.)

Second: (That the said report of the appraiser included as a part of the estate of the said (Harmon Roe) the following stocks which were set out in Schedule A4 of the affidavit for appraisal as the sole property of (Mary Roe,) viz.: 100 shares of the common capital stock of the Chicago, Milwaukee and St. Paul Railway Company, etc.)

Third: (That the order assessing the tax upon the transfer of property of the said decedent bearing date of the 8th day of October, 1914, and filed on the 9th day of October, 1914,) improperly imposed a tax upon the transfer of the stock set forth in the preceding paragraph of this notice of appeal and improperly imposed a tax upon the transfer of (twelve hundred dollars,) the amount of the debt of said decedent for (rent of cottage at Deal, New Jersey.)

Dated, (*New York, November 26, 1914.*)

Yours, etc.,

(*SAMUEL ROTH,*)

*Attorney for (Mary Roe, individually,
and as sole executrix of Harmon Roe,
deceased,)*

Office and P. O. Address,

(2 Rector Street,)

(Borough of Manhattan,)

(City of New York.)

To

(*LAFAYETTE B. GLEASON,*) Esq.,

*Attorney for the Comptroller
of the State of New York.*

(*DANIEL J. DOWDNEY,*) Esq.,

*Clerk of the Surrogate's Court
of the County of (New York,)*

Order Affirming Order Assessing Tax

FORM No. 467

Order of Surrogate Affirming Order Fixing Tax

At a Surrogates' Court, held in and for the County of
(*New York*), at (*the Hall of Records, Borough of*
Manhattan, City of New York), on the (*8th*) day of
(*May*, 1915.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*),

Surrogate.

In the Matter of the Transfer Tax upon
the Estate of
(*HARMON ROE*),
Deceased.

An appeal having been taken by (*Mary Roe*), individually and as the (*sole executrix*) of the above-named decedent, from the order fixing and assessing the transfer tax herein, entered on the (*9th*) day of (*October*, 1914,) upon the report of the appraiser, (*John V. Coggey*), dated the (*20th*) day of (*August*, 1914,) and filed herein on the (*29th*) day of (*September*, 1914,) on the grounds that the said report of the appraiser and the order entered thereon improperly included among the taxable assets of the estate of the above-named decedent, certain shares of stock, as will more fully appear by reference to the notice of appeal filed herein on the (*5th*) day of (*December*, 1914.)

And said appeal, having come on to be heard, and having heard (*Samuel Roth*), Esq., for the appellant, and (*Lafayette B. Gleason*), Esq., for the respondent, (*and on reading and filing the annexed stipulation, dated the (8th) day of (May, 1915,)*)

NOW, on motion of (*Lafayette B. Gleason*), attorney for the State Comptroller, it is

ORDERED, that the said appeal be and the same is hereby denied, and it is

FURTHER ORDERED, that the order fixing tax, entered herein on the (*9th*) day of (*October*, 1914,) be and the same is hereby affirmed.

(*ROBERT LUDLOW FOWLER*),

Surrogate.

Remitting Report for Correction

FORM No. 468

Order Reversing Order Fixing Tax and Remitting Report of
Appraiser for Correction

At a Surrogates' Court, held in and for the County of
(*New York*), at (*the Hall of Records, in the Bor-*
ough of Manhattan, City of New York,) on the
(*19th*) day of (*June, 1914.*)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER,*)

Surrogate.

In the Matter of the Transfer Tax upon
the Estate of

(*MARGARET GRACIE,*)

Deceased.

An order of this Court having been made on the (*19th*) day of
(*December, 1913,*) fixing the cash value of the interest of the
beneficiary to whom the property of the above-named decedent
was transferred upon her death, so far as the same was subject
to the Act relating to taxable transfers, and also fixing the tax
assessed against said interest under said Act;

And an appeal having been taken by the State Comptroller
from the said order, and the said appeal having duly come on to
be heard,

NOW, upon all the papers and proceedings had herein; and
after hearing (*Mr. Theodore Jones,*) in support of said appeal,
and (*Mr. Thomas Ludlow,*) in opposition thereto, and due de-
liberation having been had, it is

ORDERED, that said order be and the same hereby is reversed,
and that the report of the appraiser be remitted to him for correc-
tion as indicated in the decision of this Court filed on the (*18th*)
day of (*June, 1914.*)

(*ROBERT LUDLOW FOWLER,*)

Surrogate.

Order Assessing Tax

FORM No. 469

Order Entered Upon Supplemental Report of Appraiser

At a Surrogates' Court held in and for the County of
(*New York*,) at (*the Hall of Records, in the Borough of Manhattan, City of New York*,) on the
(*8th*) day of (*September, 1914*.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*,)

Surrogate.

In the Matter of the Transfer Tax upon
the Estate of
(*MARGARET GRACIE*,)
Deceased.

On reading the report of (*John V. Coggey*,) Esq., the appraiser, filed herein on the (*17th*) day of (*December, 1913*,) wherein it appears that the said decedent died on the (*8th*) day of (*July*,) and the supplemental report of said appraiser filed the (*30th*) day of (*July, 1914*,) it is

ORDERED AND ADJUDGED, that the cash value of the property referred to in said report, the transfer of which is subject to the tax imposed by the Act relating to the taxable transfers, and the tax to which the said transfers are liable, are as follows:

Beneficiary and relation	Amount of exemption	Cash value of interest	Tax assessed
(<i>Mary Gracie, Daughter...</i>	\$500	\$741,960.18	\$21,900.00)

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

Order Affirming Order

FORM No. 470

Order of Surrogate Affirming Order Entered on Supplemental Report
of Appraiser

At a Surrogates' Court, held in and for the County of
(*New York*,) at (*the Hall of Records, Borough of*
Manhattan, City of New York,) on the (*27th*) day
of (*October, 1914*.)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER*,)

Surrogate.

In the Matter of the Transfer Tax upon the Estate of (<i>MARGARET GRACIE</i> ,) Deceased.

An appeal having been taken by (*Mary Gracie, executrix*,) from the order fixing and assessing the transfer tax herein, made and entered on the (*9th*) day of (*September, 1914*,) upon the report of appraiser, (*John V. Coggey*,) dated the (*25th*) day of (*July, 1914*,) and filed herein the (*30th*) day of (*July, 1914*,) on the grounds that the said report of the appraiser and the order entered thereon improperly included among the taxable assets the sum of (*three hundred and twenty-eight thousand and seventy-seven and 80/100 (\$328,077.80)*) dollars, as will more fully appear by reference to the notice of appeal filed herein on the (*10th*) day of (*September, 1914*.)

And said appeal coming on to be heard, and having heard (*Mr. Walter Jay*,) for the appellant, and (*Mr. Lafayette B. Gleason*,) for the respondent,

Now, on motion of (*Lafayette B. Gleason*,) attorney for the State Comptroller, it is

ORDERED, that said appeal be and the same hereby is denied, and it is

Notice of Appeal to Surrogate

FURTHER ORDERED, that the order fixing tax, entered herein on the (9th) day of (*September*, 1914,) be and the same hereby is affirmed.

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

FORM No. 471

Notice of Appeal of Executrix to Surrogate from Order Entered on
Supplemental Report of Appraiser

SURROGATES' COURT,
(*New York*) County.

In the Matter of the Transfer Tax upon
the Estate of

(*MARGARET GRACIE*,)

Deceased.

Sirs:

PLEASE TAKE NOTICE that (*Mary Gracie*,) individually and as (*executrix*,) is dissatisfied with the appraisal herein, and hereby objects to the report of the appraiser, dated the (25th) day of (*July*, 1914,) and filed herein on the (30th) day of (*July*, 1914,) and to the order of the Surrogate filed herein on the (9th) day of (*September*, 1914,) and hereby appeals to the Surrogate from said appraisal, assessment and determination of said tax and from the said order.

The grounds upon which the said appeal is taken are: (*State grounds, e. g.*)

That the said report of the said appraiser and the said order entered thereon improperly included among the alleged taxable assets the sum of (*three hundred twenty-eight thousand and seventy-seven and 80/100* (\$328,077.80)) dollars. That said assets did not pass under the will of (*Margaret Gracie*,) but did pass under and by virtue of the will of (*William Gracie*,)

Notice of Appeal to Appellate Division

deceased, who died on the (20th) day of (*August*, 1880,) and therefore the transfer of said assets is not subject to a tax.

Dated, (*New York*, September 10, 1914.)

Yours, etc.,

(*WALTER JAY*,)
Attorney for (*Mary Gracie*,)
Individually and as Executrix,
(2 *Rector Street*,)
(*Borough of Manhattan*,)
(*New York City*.)

To

Hon. (*Lafayette B. Gleason*,)
Attorney for State Comptroller,
(233 *Broadway*,)
(*Borough of Manhattan*,)
(*New York City*.)
(*Daniel J. Dowdney*,) Esq.,
Clerk of the Surrogates' Court,
(*New York*) County.

FORM No. 472

Notice of Appeal to the Appellate Division from Order Affirming
Order Entered on Supplemental Report of Appraiser

SURROGATES' COURT,
(*New York*) County.

In the Matter of the Transfer Tax upon the Estate of (<i>MARGARET GRACIE</i> ,) Deceased.

Sirs:

PLEASE TAKE NOTICE that (*Mary Gracie*,) individually and as executrix of the last will and testament of (*Margaret Gracie*,) deceased, hereby appeals to the Appellate Division of

Notice of Appeal to Appellate Division

the Supreme Court of the State of New York, (*First Department*,) from an order of the Hon. (*Robert Ludlow Fowler*,) one of the Surrogates of the County of (*New York*,) dated the (*27th*) day of (*October*, 1914,) and entered herein and filed in the office of the Clerk of the Surrogates' Court of the County of (*New York*) on the (*28th*) day of (*October*, 1914.)

The grounds upon which said appeal is taken are: That the supplemental report of Appraiser (*John V. Coggey*,) dated the (*25th*) day of (*July*, 1914,) and filed in the office of the Clerk of the Surrogates' Court of (*New York*) County, on the (*30th*) day of (*July*, 1914,) improperly included among the alleged taxable assets the sum of (*three hundred twenty-eight thousand and seventy-seven and 80/100 (\$328,077.80)*) dollars.

That said assets did not pass under the will of (*Margaret Gracie*,) deceased, but did pass under and by virtue of the will of (*William Gracie*,) deceased, who died on the (*20th*) day of (*August*, 1880,) and therefore the transfer of said assets is **not** subject to a tax.

Dated, (*New York*, *October 29*, 1914.)

Yours, etc.,

(*WALTER JAY*,)

Attorney for (*Mary Gracie*,)

Individually and as Executrix,

(*2 Rector Street*,)

(*Borough of Manhattan*,)

(*New York City*.)

To

Hon. (*Lafayette B. Gleason*,)

Attorney for State Comptroller,

(*233 Broadway*,)

(*Borough of Manhattan*,)

(*New York City*.)

(*Daniel J. Dowdney*,) Esq.,

Clerk of the Surrogates' Court,

(*New York*) County.

Order Entered Upon Remittitur

FORM No. 473

Order of Surrogate Entered Upon Remittitur

At a Surrogates' Court held in and for the County of
(*New York*,) at (*the Hall of Records, in the Borough of Manhattan, City of New York*,) on the
(*27th*) day of (*May*, 1915.)

PRESENT:

Hon. (*JOHN P. COHALAN*,)

Surrogate.

In the Matter of the Transfer Tax upon
the Estate of

(*MARY POST*,)

Deceased.

An appeal having been taken to the Supreme Court, Appellate Division, (*First Department*,) by the Comptroller of the State of New York, from an order made and entered herein on the (*3d*) day of (*February*, 1915,) modifying an order of (*October 9*, 1914,) fixing and assessing the transfer tax upon the property of the above-named decedent, and said appeal having been heard, and said Appellate Division having affirmed said order with (\$10) costs and disbursements, and the remittitur of the Appellate Division having been filed with the Clerk of this Court on the (*20th*) day of (*May*, 1915,) and the costs of the respondent having been adjusted at the sum of (*forty-one and 20/100*) dollars,

NOW, on motion of (*Arthur Fox*,) attorney for the respondent, it is

ORDERED, that the said order of the Appellate Division of the Supreme Court be and the same hereby is made the order of this Court, and it is

FURTHER ORDERED, that the respondents, (*The Home Society*,) recover from the appellant, (*Eugene M. Travis*,) State Comptroller, the sum of (*forty-one and 20/100*) dollars costs as taxed herein.

(*JOHN P. COHALAN*,)

Surrogate.

Remission of Penalty — Notice of Motion

FORM No. 474

Notice of Motion to Have Penalty for Nonpayment Remitted

SURROGATES' COURT,
(*New York*) County.

In the Matter of the Transfer Tax upon
the Estate of

(*WALTER CARTER,*)
Deceased.

Sirs:

PLEASE TAKE NOTICE that on all the papers and proceedings herein and on the annexed petition of (*Caroline Carter,*) verified the (14th) day of (*February,* 1916,) we will move this court at a term thereof to be held at (*the Hall of Records,*) in the (*Borough of Manhattan, City of New York,*) on the (19th) day of (*February,* 1916,) at (10:30) o'clock in the (*fore*)noon of that day or as soon thereafter as counsel can be heard, for an order remitting the penalty of ten per cent. upon the tax heretofore assessed upon the estate of the above-named decedent by order of the Surrogate of said County of (*New York,*) made and entered on the (1st) day of (*February,* 1916,) to interest at the rate of six per cent. per annum from the date of the accrual of the said tax, to wit: the date of the death of the decedent, which occurred on the (13th) day of (*July,* 1901,) to the date of payment of said tax, provided said payment be made within twenty days after the entry of the order of said surrogate to be made upon this application.

Dated, (*New York, February 14th,* 1916.)

(*COLE & ADAMS,*)

Attorneys for (*Caroline Carter, Executrix,*)

(*32 Liberty Street,*)

(*Borough of Manhattan,*)

(*New York City.*)

To

Hon. (*EUGENE M. TRAVIS,*)

State Comptroller,

New York.

Remission of Penalty — Petition

FORM No. 475

Petition to Have Penalty Remitted

SURROGATES' COURT,
(*New York*) County.

In the Matter of the Transfer Tax upon
the Estate of
(*WALTER CARTER,*)
Deceased.

To the Surrogate's Court of the County of (*New York,*):

The petition of (*Caroline Carter,*) respectfully shows:

That (*she*) is (*executrix of the last will and testament of Walter Carter,*) deceased, in the above-entitled proceeding.

That the said decedent died on the (*13th*) day of (*July,* 1912;) that proceedings have been had herein for a determination of the transfer tax upon the estate of the said decedent as follows: On the (*20th*) day of (*November,* 1913,) on the petition of (*John Frame and Caroline Carter, executor and executrix of the last will and testament*) of the decedent, an order was made and filed herein, designating (*John V. Coggey,*) Esq., appraiser to fix the market value of decedent's estate subject to the payment of a transfer tax.

That, at the time of the issuance of the letters testamentary herein, (*John Frame, the executor of the will of said decedent, took unto himself the actual control of the estate of the testator and the possession of all of the assets of the said estate and continued in such sole control and possession until about February 1, 1916; that the said Frame mismanaged the said estate, and in October, 1914, proceedings were begun to revoke the letters testamentary issued to him as such executor; said proceedings were contested and did not conclude until January 19, 1915, on which date an order was made and filed, revoking said letters testamentary; deponent asks leave to refer to (the petition, answer, amended petition and answer thereto and the said order, and the proceedings upon which same is based,) as part of this petition with the same effect as if they were a part hereof.*

Remission of Penalty — Petition

During the pendency of such litigation, said (*Frame failed to take any steps to conclude these proceedings and the executrix, not having the books and papers and assets of said estate in her possession, could take no steps towards that end. Shortly after said order was made Caroline Carter, the executrix of the said will, obtained from the said Frame the papers pertaining to and the assets of the said estate. Shortly after she obtained the possession of said papers and assets she took immediate steps to conclude the proceedings to fix the transfer tax and has since prosecuted the same expeditiously. Because of her unfamiliarity with the affairs of said estate as well as that of her counsel, considerable difficulty was experienced in preparing the papers required by the appraiser herein. An affidavit of considerable length was prepared and filed, but a further affidavit was required and, in August, 1915, same was filed. Thereafter numerous conferences between said appraiser and the counsel to the State Comptroller and this deponent, respecting these proceedings, were had, and on the 12th day of January, 1916, the report of the appraiser herein was filed and the tax fixed by order of this court made and filed on the 1st day of February, 1916.*)

That more than eighteen months have elapsed since the date of the death of the said decedent and interest of ten per centum per annum from the date of the death of decedent to the date of payment as provided by the statute is due because of the non-payment of this tax.

That by reason of (*the mismanagement of the affairs of the estate aforesaid and the litigations between the beneficiaries under the said will and the said executor,*) there has been unavoidable delay on the part of the executrix herein; that the delay has been because of no act of hers nor of the beneficial owners of the said estate; deponent is informed and believes that because of the acts of the said (*Frame, the estate has been largely wasted and depleted so that there is now but a small part of the original estate left for distribution among the beneficiaries; practically all the cash and other assets of said estate, with the exception of 2,000 shares of the capital stock of the American Can Company, a manufacturing corporation which has no market value, left after the payment of debts were used by said Frame and lost in speculation,*) and the beneficiaries have suffered great hardship because of the acts of said (*Frame;*) and it is submitted on their behalf,

Notice of Settlement of Proposed Order

the penalty necessarily coming out of the residue, that the payment of the said penalty will be an unnecessary hardship.

That the executrix is desirous that this tax be paid and, in order to obtain a proper final receipt therefor from the State Comptroller, makes this application pursuant to the provisions of the said act for the remission of the penalty incurred by reason of the non-payment of such tax within eighteen months after the date of the death of the said decedent from 10 per cent. to interest at six per cent.

That no previous application for this order has been made.

WHEREFORE, petitioner prays that an order be made, remitting the penalty upon the tax heretofore fixed herein from 10 per centum to 6 per centum, to be charged upon said tax upon the accrual thereof, to-wit: From the date of the death of the said decedent, (*July 13, 1912,*) to the date of payment, provided such payment be made within twenty days after the date of the entry of the order of the Surrogate upon this application; and for such other and further relief as to the court may seem just and proper.

(*CAROLINE CARTER.*)

(Verification.)

FORM No. 476**Notice of Settlement of Proposed Order**

SURROGATES' COURT,
(*New York*) County.

In the Matter of the Transfer Tax upon the Estate of (<i>WALTER CARTER,</i>) Deceased.

Sir:

TAKE NOTICE that the within is a copy of an order in the within entitled proceeding, which we shall present to Hon. (*Robert Ludlow Fowler,*) at the Surrogates' Chambers in the

Order Remitting Penalty

(*Hall of Records, Borough of Manhattan, City of New York,*) on the (28th) day of (*February, 1916,*) at (10:30) o'clock in the (fore)noon of that day for settlement and signature.

Dated, (*New York, February 26, 1916.*)

Yours, etc.,

(*COLE & ADAMS,*)

Attorneys for (*Executrix,*)

(*32 Liberty Street,*)

(*New York City.*)

To

(*LAFAYETTE B. GLEASON,*)

Attorney for State Comptroller.

FORM No. 477

Order Remitting Penalty

At a Surrogates' Court, held in and for the County of (*New York,*) at the (*Hall of Records,*) in the (*Borough of Manhattan, City of New York,*) on the (1st) day of (*March, 1916.*)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER,*)

Surrogate.

In the Matter of the Transfer Tax upon
the Estate of

(*WALTER CARTER,*)

Deceased.

Upon reading and filing the petition of (*Caroline Carter,*) duly verified the (14th) day of (*February, 1916,*) whereby it appears that the payment of the transfer tax as heretofore fixed herein has been unavoidably delayed, and that good cause has been shown for such nonpayment, and the notice of motion with proof of due service thereof on (*Lafayette B. Gleason,*) attorney for the State Comptroller, appearing and not opposing,

Order Remitting Penalty

NOW, on motion of (*Cole & Adams*,) attorneys for (*Caroline Carter, executrix of the last will and testament of*) the above named deceased herein, it is

ORDERED, AND ADJUDGED, that the penalty of 10 per centum upon said tax be remitted, and that the interest be charged thereupon at the rate of 6 per centum from the date of accrual of said tax, to wit, the (13th) day of (*July, 1901*,) the date of death of said decedent, to the date of payment thereof, provided that payment be made within twenty days after the entry of this order.

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

ADOPTION

I. Consent is necessary :

- (a) Of the minor if he is over twelve.
- (b) Of the foster parents, husband or wife, unless
 1. They are lawfully living separated.
 2. Adoption is joint.
- (c) Of parents or surviving parent of a legitimate child.
- (d) Of the mother of an illegitimate child, *except*
 1. Of parent who has abandoned child.
 2. Of parent deprived of civil rights.
 3. Of parent divorced for adultery or cruelty ; but notice must be given to both the parents personally or in such manner as may be directed by a judge of a court of competent jurisdiction.
 4. Of parent adjudged insane or habitual drunkard.
 5. Of parent judicially deprived of custody of child.
- (e) Of person having legal custody of child :
 1. If the parents are not living.
 2. In case the parent's consent is not required.

II. The consent of the person required in the above subdivisions will not be needed :

1. If minor is 18 years or upwards and in the opinion of the Judge or Surrogate his moral or temporal interest would be promoted, or the consents cannot be obtained.
2. If person to be adopted is 21 years or upwards. But in these cases, notice of the application must be served on such persons as the Surrogate or Judge shall direct.

III. Proceedings :

Application must be made to Surrogate or County Judge of the County where foster parents reside if they are residents of the State ; or to the Surrogate or County Judge of the County where the minor * resides if they are non-residents.

* So in the statute, L. 1916, ch. 453.

Outline of Procedure

The following papers should be presented :

- (a) The necessary consents.
- (b) Proof that notice of the application has been given to any persons entitled to same under the statute.
- (c) An agreement of the foster parents to adopt minor and treat him as their own lawful child, and the proposed new name of the minor if a change of name is desired.
- (d) Petition, showing:
 - 1. Age of the person to be adopted as nearly as can be ascertained.
 - 2. Facts relating to custody.
 - 3. Facts upon which adoption is sought.
- (e) When the legal custodian (society or otherwise) resides without the County, his or their written and acknowledged consent, or that of the proper officer (if a society), certified as required in case of a deed.
- (f)
 - 1. The foster parent or parents, the person to be adopted and all persons whose consent is necessary, must appear before the Surrogate of the County where the foster parents reside, if they are residents of the State; or before the Surrogate or County Judge of the County where the minor resides, if they are non-residents to be examined except in (d) *supra*, and where a parent or person or institution having the legal custody of the minor resides outside the County, his or their written acknowledged consent of such institution certified as conveyances are required to be certified to entitle them to record in a County in this State. The filing of such consents is equivalent to appearance and execution of the adoption agreement.
 - 2. The necessary consent and agreements must be severally acknowledged by the necessary persons before the Surrogate and signed by them.

Petition — Infant Under 18

IV. Order and filing:

Granted if satisfied that the moral and temporal interests of the person to be adopted will be promoted thereby.

Order:

1. Recites (a) the reason, (and if no father or mother living, or no person having legal custody, such facts to be stated), and (b) the proceedings.
2. Allows and confirms the adoption.
3. Directs that the minor shall "thenceforth be regarded and treated in all respects as the child of the foster parent or parents."
4. If Surrogate or Judge is satisfied there is no reasonable objection to the change of name proposed, that the name of the minor be changed to that designated in the instrument of adoption.

All papers must be filed in the office of the County Clerk.

FORM No. 478

**Petition for Adoption of Minor Under 18, in Custody of an
Institution**

(*SURROGATES'*) COURT,
(*New York*) County.

In the Matter of the Adoption of (<i>MARY ROSE</i> ,) (<i>An infant under the age of twelve years</i>) by (<i>Oliver Dennis and Annie Dennis, his wife.</i>)	}
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To the (*Surrogates'*) Court of the County of (*New York*):

The petition of (*Oliver Dennis and Annie Dennis, his wife*,) respectfully shows:

I. That your petitioners are over the age of twenty-one years, and reside together at No. (*147 West 14th Street, Borough of Manhattan, City and County of New York, and that they have no children of their own.*)

Petition — Infant Under 18

II. (*That your petitioners have been supporting for the last two and a half years an infant female child, Mary Rose, the infant above named, born, as your petitioners have been informed, on or about the 1st day of May, 1909, in Brooklyn, New York. That your petitioners received the custody of said child from the Brooklyn Children's Aid Society, on or about the 28th day of February, 1913. That they were informed by the said Society that about the 1st day of May, 1912, the said infant had been committed to the said Society as a destitute child. That the mother of said infant was then sick and died on the 8th day of April, 1912, the father of said infant died on the 15th day of July, 1912. Your petitioners were further informed that there were no other relatives who claimed the custody of said infant. That during all the times that your petitioners have had said child with them, no one has appeared claiming to be a relative or claiming to be entitled to the custody of said infant, and your petitioners are desirous of adopting said child as their own lawful child, pursuant to the statute of the State of New York, in such case made and provided.*) That the (*Brooklyn Children's Aid Society*) is a corporation empowered to place children in homes of adoption. And the (*Society*) having the custody of the said infant, consents to such adoption and has signed a formal agreement and consent thereto which is annexed to this petition. That your petitioners have sufficient means properly to care for said child, and have now signed and presented herewith the instrument required by section 111, Art. 7 of the Domestic Relations Law, also signed and executed by the Brooklyn Children's Aid Society. That your petitioners, the said foster parents, and said (*minor*) are present in court.

WHEREFORE, your petitioners pray for an order of the (*Surrogate*) of the County of (*New York*), allowing and confirming said adoption, and directing that the said (*infant, Mary Rose*), shall henceforth be regarded and treated as your petitioners' own lawful child, and be accorded all the rights and privileges conferred by law, and your petitioners pray for such other and further relief as to the court may seem just and proper in the premises.

No previous application has been made to any Surrogate or court for such an order.

(*OLIVER DENNIS*),

(*ANNIE DENNIS*.)

Instrument

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

(*OLIVER DENNIS and ANNIE DENNIS*,) being duly sworn, depose and say, that (*they*) are the above-named petitioners; that (*they*) have read the foregoing petition and know the contents thereof and the same is true to (*their*) own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters (*they*) believe it to be true.

(*OLIVER DENNIS*,)
 (*ANNIE DENNIS*.),

Sworn to before me, this }
 (8th) day of (*September*, 1915.) }
 (*ROBERT LUDLOW FOWLER*,)

Surrogate.

FORM No. 479

Adoption Instrument

(*SURROGATES*) COURT,
 (*New York*) County.

In the Matter of the Adoption of }
 (*MARY ROSE*,) }
 (*An infant under the age of twelve years*) }
 by (*Oliver Dennis and Annie Dennis*, }
his wife.) }

THIS IS TO CERTIFY, that (*Mary Rose*, who was born on or about May 1, 1909, being a destitute child, was placed in the care of the *Brooklyn Children's Aid Society of the Borough of Brooklyn, County of Kings, New York*,) a corporation duly incorporated under the laws of the State of New York, empowered to place children in homes of adoption and having the principal offices in the (*Borough of Brooklyn, City of New York*.) That the said child was duly committed to the said (*Brooklyn Children's Aid Society*) by the Department of Public Charities of the City of (*New York*,) on or about the (1st) day of (*May*, 1911.)

Instrument

That the said child was accordingly placed by an agent of the said (*Society*) with (*Oliver Dennis and Annie Dennis, his wife, of New York City,*) State of New York, and the said (*Brooklyn Children's Aid Society*) does hereby consent to the legal adoption of the said child by said (*Oliver Dennis and Annie Dennis, his wife,*) subject to the approval of the (*Surrogate*) or [*County Judge*] of (*New York*) County in the State of New York, as provided by law.

And the said (*Oliver Dennis and Annie Dennis, his wife, of the City, County*) and State of New York aforesaid, do hereby undertake and agree in pursuance of the provisions of the laws of the State of New York, to adopt and treat said minor child as their own lawful child. That a change in the name of said minor is desired and that the new name by which said minor shall hereafter be known is (*Mary Rose Dennis.*)

IN WITNESS WHEREOF the said (*Brooklyn Children's Aid Society*) has caused this instrument to be attested by the (*President, Howard O. Wood,*) who is authorized by the Board of (*Trustees*) of said (*Society*) to sign its corporate name to the above and similar instruments, and has caused its corporate seal to be hereunto affixed this (14th) day of (*September,*) in the year of our Lord, one thousand nine hundred and (*fifteen,*) and likewise the said (*Oliver Dennis and Annie Dennis, his wife,*) have hereunto affixed (*their*) hands and seals this (18th) day of (*September,*) in the same year.

(*BROOKLYN CHILDREN'S AID SOCIETY.*)

(*by Howard O. Wood,*

President of said Society.)

(*OLIVER DENNIS,*)

(*ANNIE DENNIS.*)

[SEAL]

Witness:

(*FRANK DILLON.*)

STATE OF NEW YORK, }
County of (*Kings,*) } ss.:

On this (14th) day of (*September, 1915,*) before me personally came (*Howard O. Wood,*) to me personally known, who being by me duly sworn, deposed and said that he resided in the (*City of New York,*) County of (*Kings*) and State of New York; that he is the (*President of the Brooklyn Children's Aid Society,*) the corporation described in and which executed the foregoing certificate; that he knows the corporate seal of the (*Brooklyn*

 Proof of Custody

Children's Aid Society;) that the seal affixed to the foregoing instrument was such corporate seal, that it was so affixed by order of the (*Board of Trustees*) of said corporation, and that he signed his name thereto by like order as (*President*) of said corporation.

(*CHARLES ROCK,*)

Notary Public,
(*Kings County.*)

STATE OF NEW YORK, }
County of (*New York,*) } ss.

On this (18th) day of (*September, 1915,*) before me personally came (*Oliver Dennis and Annie Dennis, his wife,*) both proven to me on oath of (*Frank Dillon, a practicing attorney,*) to be the individuals described in and who executed this foregoing instrument, and they thereupon duly and severally acknowledged to me that they executed the same.

(*ROBERT LUDLOW FOWLER,*)
Surrogate.

FORM No. 480

Adoption of Minor — Proof of Custody

(SURROGATES') COURT,
(*New York*) County.

In the Matter of the Adoption of (<i>MARY ROSE,</i>) (<i>An infant under the age of twelve years</i>) by (<i>Oliver Dennis and Annie Dennis,</i> <i>his wife.</i>)	}
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STATE OF NEW YORK, }
County of (*Kings,*) } ss.:

(*Arthur Waterman,*) being duly sworn, deposes and says, that he resides in the (*Borough of Brooklyn,*) County of (*Kings,*) New York, that he is the (*general secretary of the Brooklyn Children's Aid Society*) and is familiar with the records of said (*Society*) and the work done by it. That the following statement is made upon information and belief and that the source of his information and the grounds of his belief are the records of said society.

Surrender of Child

That the above-named (*infant Mary Rose*,) who was born on or about the (1st) day of (*May*, 1909,) upon due commitment made through the Department of Public Charities, was placed in the care and custody of said (*Society*) on or about the (1st) day of (*May*, 1911,) at public expense as a dependent child. (*That the mother of said infant was ill at the time, and deponent has been informed that she died on the (8th) day of (May, 1911,) and that the father died on or about the 15th day of July, 1911, and that there were no relations able and the proper parties to care for said infant.*) That on or about the (25th) day of (*February*, 1912,) said child was placed by said (*Society*) in the care and keeping of (*Oliver Dennis and Annie Dennis, his wife, then of the Borough of Manhattan, City and County of New York,*) and having maintained due supervision, deponent is satisfied that said infant has been well treated and that her welfare will be promoted in case she is lawfully adopted by said (*Oliver Dennis and Annie Dennis, his wife.*)

(*ARTHUR WATERMAN.*)

Sworn to before me, this }
(10th) day of (*September*, 1915.) }
(*WALTER ROBERTS,*)

Notary Public,
(*Kings*) County.

Where there has been no legal commitment of the minor to an institution, but it was placed therein by parents who are living, the proof of custody should be accompanied by a copy of the surrender of the child to the institution and the consent of the parents should be obtained unless waived, see p. 962 and Forms 482, 483.

Surrender of Child

(*New York, June 26th, 1914.*)

I, (*Frank Hemp*,) do hereby certify that I am the (*father*) of the child named (*John Hemp*,) aged (*two*) (2) years, now staying at (No. 115 *Ten Eyck* street, *Brooklyn*,) that the mother of said child is (*Annie Hemp*,) deceased, and that no parent, guardian or relative of said child is able to support and properly train said child.

For these reasons, I, (*Frank Hemp*,) do hereby voluntarily

Order

and unconditionally surrender the said child (*John Hemp*,) under the provisions of section 1 of chapter 438 of the laws of 1884, to the care and custody of the (*State Charities Aid Association for the Care of Destitute Children*,) and I hereby pledge myself not to interfere, directly or indirectly, with the custody or management of said child in any way.

(Signature) (*FRANK HEMP*.)

Witnesses:

(*HENRY SCHULZ*,)

(*GERTRUDE CLARKSON*.)

STATE OF NEW YORK, }
County of (*Kings*,) } ss.:

On the (*26th*) day of (*June*, A. D. 1914,) before me personally appeared (*Frank Hemp*,) to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

(*HENRY SCHULZ*,)

(Seal.)

Notary Public,
(*Kings*) Co.

FORM No. 481

Order Allowing and Confirming Adoption

At Chambers of the Surrogates' Court, held in and for the County of (*New York*) at (*the Hall of Records*,) in the (*Borough of Manhattan, City of New York*,) on the (*18th*) day of (*September, 1915*.)

PRESENT:

(Hon. *ROBERT LUDLOW FOWLER*,)

Surrogate.

In the Matter of the Adoption of
(*MARY ROSE*,)
(*An infant under the age of twelve years*)
by (*Oliver Dennis and Annie Dennis*,
his wife.)

Application having been made to me by (*Oliver Dennis*) and (*Annie Dennis, his wife*,) residing in the County of (*New York*)

Order

for an order allowing and confirming the adoption by (*them*) of (*Mary Rose, an infant female child*) born on or about the (*first*) day of (*May, 1909,*) in the (*Borough of Brooklyn, New York City*) and the above-named parties having (*severally*) appeared before me and having been examined pursuant to the provisions of the Domestic Relations Law, and said parties having presented to me an instrument containing substantially the consents required by said law, an agreement on the part of the foster parents to adopt and treat said minor as their own lawful child, and said instrument having been signed by said foster parents, and by the (*Brooklyn Children's Aid Society,*) being each person whose consent is necessary to the adoption, and having been acknowledged before me, [and the acknowledgment of the said (*Society*) having been presented to me duly executed and verified,] and

IT APPEARING TO MY SATISFACTION from the examination had by me in the premises that the moral and temporal interests of the said (*minor*) will be promoted by the said adoption, for the reason that the (*father and mother*) of said (*infant are dead*) and that the said (*Oliver Dennis and Annie Dennis, his wife, are*) persons of sufficient means and are fit and proper persons to have the care and custody of the said (*infant*), and that no objection exists to the changing of the name of said minor to the name designated in the instrument of adoption, it is

ORDERED, ADJUDGED AND DECREED, that the said adoption of (*Oliver and Annie Dennis, his wife,*) of (*Mary Rose*) an (*infant child*) born on or about the (*first*) day of (*May, 1909*) be and the same is hereby allowed and confirmed, and it is further

ORDERED, ADJUDGED AND DECREED, that the said (*child*) shall henceforth be regarded in all respects as the lawful child of the said (*Oliver Dennis and Annie Dennis, his wife,*) and that the name of said minor be changed from (*Mary Rose*) to (*Mary Rose Dennis*) and that said minor shall hereafter be known as (*Mary Rose Dennis.*)

(ROBERT LUDLOW FOWLER,)

Surrogate.

FORM No. 482

Petition for Adoption of Minor Under 18 in Custody of Parents
(*SURROGATES'*) COURT,
(*New York*) County.

In the Matter of the Adoption
of
(*WILLIAM CARSON*,) a minor under
the age of (*twelve*) years by (*Thomas
Mann and Mary Mann, his wife,*) foster
parents.

To the (*Surrogates'*) Court of the County of (*New York*):

The petition of (*Thomas Mann and Mary Mann, his wife,*) respectfully shows to this Court:

I. That your petitioners are adults and lawfully married and reside together at (*No. 212 West 107th Street, Borough of Manhattan, County of New York.*) That they (*have no children of their own.*)

II. That they (*have had with them and have been supporting for the last three years,*) an infant (*male*) child, (*William Carson,*) the minor above named, born as your petitioners have been informed on the (*7th*) day of (*December, 1912,*) at (*Bellevue Hospital, New York City,*) of (*William Carson*) and (*Anna Carson,*) his wife. That your petitioners (*about January, 1913, answered an advertisement in the "World" which stated that there was a child which the parents wished to board out. That said Anna Carson then brought the child, said William Carson, above mentioned, to the house of your petitioners and agreed to pay \$10 a month for the board of this child. That this amount was paid for a short time and for the first few months the mother of said infant, Anna Carson, and also her husband William Carson, called occasionally to see the child. That after about two months said parties did not come again*) and your petitioners attempted to locate them by calling at their former address (*on 56th Street near Lexington Avenue, New York City.*) That these parties (*had moved*) and your petitioners were never able to find the parents of said infant again until (*this year when your petitioners learned from a former friend of said Anna Carson that William Carson, father of the infant was now in the City Hospital, New York City. That about the (first) of (June, 1915,*)

Petition — Infant Under 18

your petitioner, (*Mary Mann*,) called at (*the City Hospital*) and saw said (*William Carson*) and was informed by him that (*the mother of said infant, Anna Carson, died on the 16th day of August, 1915,*) and that he would be willing to sign his consent to the adoption of the said infant, (*William Carson*,) by your petitioners. That your petitioners are now desirous of adopting said child as their own lawful child, pursuant to the Statute of the State of New York in such case made and provided. That the (*father*) of said infant consents to such adoption, and has signed a formal agreement and consent thereto, which is annexed to this petition. That your petitioners have sufficient means properly to care for the said infant and have now signed and present herewith the instrument required by section 111, article 7, of the Domestic Relations Law, also signed and executed by the (*father*) of said infant.

That no other application has been made to any Surrogate or Court for such an order. That there are no other parties interested in this proceeding except those above mentioned.

WHEREFORE, your petitioners pray for an order of the (*Surrogate*) of the County of (*New York*,) allowing and confirming said adoption and denoting that the said infant, (*William Carson*,) shall henceforth be regarded and treated as your petitioners' own lawful child, and be accorded all the rights and privileges conferred by law, and for such other and further relief as to the Court may seem just and proper in the premises.

(*THOMAS MANN*,)

(*MARY MANN*.)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*Thomas Mann*) and (*Mary Mann*,) being duly sworn, depose and say that they are the petitioners named in the foregoing petition; that they have read the same and know the contents thereof, and that the same is true to their own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters they believe it to be true.

(*THOMAS MANN*,)

(*MARY MANN*.)

Sworn to before me, this }
(18th) day of (*July, 1916.*) }

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

FORM No. 483

Adoption Instrument — Minor Under 18 in Custody of Parent

(SURROGATES') COURT,
(New York) County.

In the Matter of the Adoption
of
(WILLIAM CARSON,) a minor under
the age of twelve years by (Thomas
Mann and Mary Mann, his wife,)
foster parents.

AGREEMENT, made this (18th) day of (July, 1916,) by and between (Thomas Mann and Mary Mann, his wife,) of (the County of New York,) parties of the first part, hereinafter called the foster parents and (William Carson) of (the Borough of Manhattan, City and County of New York,) party of the second part,

WHEREAS, said foster parents are desirous of adopting, pursuant to the provisions of the Domestic Relations Law, chapter 14, article 7, an infant (male) child, (William Carson,) born on the (7th) day of (December, 1912,) being an infant (four and one-half) years of age, and of extending to the said child all the benefits, privileges and rights contemplated by said statute, and of having the name of said minor changed from (William Carson) to (William Mann,) and

WHEREAS, the said party of the second part, being the (father) of said infant, approves of said adoption and consents thereto; now in consideration of the premises, said parties hereby mutually covenant and agree as follows:

First. The said foster parents hereby covenant and agree to adopt and treat said (William Carson) as their own lawful child, hereby extending and assuring to said child all the rights, privileges and benefits incident to such relation, and hereby assume and engage to fulfill all the responsibilities and duties of parents in respect to said child, and that the name by which said minor shall hereafter be known, shall be (William Mann).

Second. The said party of the second part does hereby consent to such adoption and covenants and agrees to acquiesce therein,

Instrument

and to refrain from doing or causing to be done any act or thing whatsoever inconsistent or in any way interfering with the rights, privileges and duties of said child, when adopted; and does hereby fully surrender the said (*William Carson*,) to said (*Thomas Mann and Mary Mann, his wife*.)

IN WITNESS WHEREOF, the said (*Thomas Mann and Mary Mann*,) parties of the first part, and (*William Carson*,) party of the second part, have hereunto severally set their hands and seals the day and year first above mentioned.

In the presence of

(*ARTHUR DUNN*.)

(*THOMAS MANN*,)

(*MARY MANN*,)

(*WILLIAM CARSON*.)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this (*18th*) day of (*July*, 1916), before me, the (*Surrogate*) of the County of (*New York*), personally came (*Thomas Mann, Mary Mann and William Carson*,) proven to me by the oath of (*Arthur Dunn*,) counsellor at law, to be the individuals described in and who executed the foregoing instrument and they duly and severally acknowledged to me that they executed the same.

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

Proof of Custody

FORM No. 484

Adoption — Minor Under 18, Proof of Custody

SURROGATES' COURT,
(*New York*) County.

In the Matter of the Adoption of (<i>WILLIAM CARSON</i> ,) a Minor Under the Age of Twelve Years, by (<i>THOMAS MANN and MARY MANN, His Wife</i> ,) Foster Parents.	}
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STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*WILLIAM CARSON*,) being duly sworn, deposes and says:
That he (*is temporarily residing at the City Hospital, Blackwells
Island, New York City*,) and is the father of (*William Carson*,)
the infant above named. The said infant was born on the
(*7th*) day of (*December, 1912*,) at (*Bellevue Hospital, New
York City*,) That (*Anna Carson, mother of said infant, died on
the 16th day of August, 1915, at Bellevue Hospital, New York
City*,) That there is no other person than deponent and the peti-
tioners herein entitled to the custody of said infant or who claims
the custody of said infant.

(*WILLIAM CARSON*,)

Sworn to before me, this }
(*18th*) day of (*July, 1916*,) }

(*ROBERT LUDLOW FOWLER*,)

Surrogate.

Order

FORM No. 485

Order Allowing and Confirming Adoption—Minor Under 18 in
Custody of Parent

At Chambers of the (*Surrogates'*) Court, held in and for
the County of (*New York*) at (*the Hall of Records,*
in the Borough of Manhattan, City of New York,)
on the (*18th*) day of (*July, 1916.*)

PRESENT:

Hon. (*ROBERT LUDLOW FOWLER,*)

Surrogate.

In the Matter
of the
Adoption of (*WILLIAM CARSON,*)
a Minor Under the Age of (*Twelve*)
Years, by (*THOMAS MANN and*
MARY MANN, His Wife,) Foster
Parents.

Application having been made to me by (*Thomas Mann and Mary Mann, his wife,*) residing in the County of (*New York,*) for an order allowing and confirming the adoption by them of (*William Carson,*) an infant (*male*) child born on the (*7th*) day of (*December, 1912,*) in (*New York City,*) and the above-named parties having severally appeared before me, and having been examined pursuant to the provisions of the Domestic Relations Law, and said parties having presented to me an instrument containing substantially the consents required by said law, an agreement on the part of the foster parents to adopt and treat said minor as their own lawful child, together with a statement of the age of said child, and said instrument having been signed by said foster parents and by the (*father*) of the said infant, being the only person whose consent is necessary to the adoption, and having been acknowledged before me, and

IT APPEARING TO MY SATISFACTION from the examination had by me in the premises, that the moral and temporal

Order

interests of the said minor will be promoted by the said adoption, for the reason that (*the mother of said infant is dead and the father is unable to properly care for*) the said infant, and that the said (*Thomas Mann and Mary Mann*) are persons of sufficient means and are fit and proper persons to have the care and custody of said infant, and that no objection exists to the proposed change of the name of said minor to the name designated in the instrument of adoption, it is hereby

ORDERED, ADJUDGED AND DECREED, that the said adoption by (*Thomas Mann and Mary Mann, his wife,*) of (*William Carson,*) an infant (*male*) child, born on the (*7th*) day of (*December, 1912,*) be and the same is hereby allowed and confirmed, and it is further

ORDERED, ADJUDGED AND DECREED, that the said child shall henceforth be regarded and treated in all respects as the lawful child of said (*Thomas Mann and Mary Mann, his wife,*) and the name of said minor is hereby changed from (*William Carson*) to (*William Mann,*) and said minor shall hereafter be known as (*William Mann.*)

(*ROBERT LUDLOW FOWLER,*)

Surrogate.

PROOF OF DEBT—BANKRUPTCY

FORM No. 486

Bankruptcy—Proof of Secured Debt by Corporation

In the District Court of the United States, for the (*Southern*)
District of (*New York*.)

In the Matter of
(*CHARLES P. LAWSON*),
Bankrupt.

In Bankruptcy,
No. (2051.)

UNITED STATES OF AMERICA, }
(*Eastern*) District of (*Pennsylvania*.) } ss.:

At (*Philadelphia, in the County of Philadelphia*,) in said (*Eastern*) District of (*Pennsylvania*,) on the (*eighth*) day of (*May*, 1915,) came (*Charles P. Hughes*) of said (*City of Philadelphia*,) in said (*Eastern*) District of (*Pennsylvania*,) and made oath and says that he is (*treasurer*) of the (*Western Manufacturing Company*,) a corporation incorporated by and under the laws of the State of (*New Jersey*,) and carrying on business at No. (176 *Bank*) street, in the (*City of Philadelphia*,) in the County of (*Philadelphia*) and State of (*Pennsylvania*,) and that he is duly authorized to make this proof, and says further that the said (*Charles P. Lawson*,) the person (*against*)* whom a petition for adjudication of bankruptcy has been filed was, at and before the filing of said petition and still is justly and truly indebted to said corporation in the sum of (*fifteen hundred*) (\$1,500) dollars; that the said debt exists upon (*an account for \$600 for goods sold and delivered, and upon a promissory note for \$900 made by said bankrupt, bearing date January 2, 1915, and payable ninety days after date to the order of the Western Manufacturing Company*,) which are hereto annexed; that the consideration of said debt is as follows: (*For the said account, goods sold and delivered by the Western Manufacturing Company between January 1, 1915, and March 11, 1915, as shown by the annexed account*) marked Exhibit A, and made a part hereof (*for the said note a balance due on account for goods*

* Or "by".

Proof of Secured Debt — Corporation

sold and delivered to said bankrupt prior to January 1, 1915;) and that the said debt became due on (*April 2, 1915;*) that no note has been received for the said debt, nor any judgment rendered thereon except as aforesaid; that no part of the said debt has been paid (*except fifty dollars on account of said merchandise account;*) that there are no set-offs or counterclaims to the same [except * * *,] and that said corporation has not nor has any person by its order, or to the knowledge or belief of deponent for its use had or received any manner of security for said debt whatever, except the following, which is the only security held for the said debt.

A chattel mortgage on the stock of the said bankrupt contained in the store lately occupied by him at (*No. 11 Bridge street, Borough of Brooklyn, City of New York.*)

Dated, (*January 2, 1915.*)

(*CHARLES P. HUGHES,*)

**(Treasurer of Western Manufacturing Co.)*

Subscribed and sworn to before me, }
this (*8th*) day of (*May, 1915.*) }

(*RICHARD FIELD,*)

Notary Public,

(*Philadelphia*) Co.

* This proof of claim should be made by the Treasurer, General Order No. XXI.

FORM No. 487

**Bankruptcy — Proof of Debt on a Judgment by Agent or Attorney
in Fact**

In the District Court of the United States, for the (*Southern*)
District of (*New York.*)

In the Matter of (THE FRANKLIN PUBLISHING COMPANY,) a Corporation, Bankrupt.	}	In Bankruptcy, No. (1567.)
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UNITED STATES OF AMERICA, }
 (*Eastern*) District of (*New York,*) } ss.:

At (*the Borough of Brooklyn, City of New York, County of Kings,*) in said (*Eastern*) District of (*New York,*) on the (*fifth*) day of (*January, 1915,*) came (*Perry Nichols, of the Borough of Brooklyn,*) in the County of (*Kings,*) and State of (*New York,*) agent (*or attorney in fact*) of (*King, Richards & Company,*) of the (*City of New York,*) in the County of (*New York*) and State of (*New York*) and made oath, and says that (*The Franklin Publishing Company,*) the corporation (*by*)* which a petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition and still is, justly and truly indebted to the said (*King, Richards & Company*) in the sum of (*three hundred and twenty-seven and 50/100*) (\$327.50) dollars; that the consideration of said debt is as follows: (*work done and material furnished in printing and binding 20,000 catalogues for the said bankrupt of the reasonable value and agreed price of \$300.00,*) for which sum, together with (\$27.50) costs, a judgment was recovered by (*King, Richards & Company*) against the said bankrupt in the (*Circuit*) Court of (*Cook County, Illinois,*) and docketed in the office of the clerk of said county on (*December 10, 1914;*) a transcript of which is hereto annexed, that said debt is now due, and that no part thereof has been paid; that no note has been received for, nor any judgment rendered upon the said debt, except as aforesaid, and that this deponent has not,

* Or "against".

 Proof of Debt — Individual

nor has any person by his order, or to this deponent's knowledge or belief, for his use or for the use of said (*King, Richards & Company*) had or received any manner of security for said debt whatever.

And this deponent further says that the reason why this deposition is made by deponent and not by a member of said firm is because all of the members of said firm are at present sojourning without the United States,* and that he is duly authorized by said firm to make this affidavit, and that it is within his knowledge that the aforesaid debt was incurred and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

(*PERRY NICHOLS.*)

Subscribed and sworn to before me, }
 this (5th) day of (*January, 1915.*) }

(*RICHARD FIELD,*)

Notary Public,

(*New York*) County.

 FORM No. 488

Bankruptcy — Proof of Debt (Unsecured) by Individual

In the District Court of the United States, for the (*Southern*)
 District of (*New York.*)

In the Matter of
 (*CHARLES P. LAWSON,*)
 Bankrupt.

In Bankruptcy,
 No. (2051.)

UNITED STATES OF AMERICA, } ss.:
 (*Southern*) District of (*New York,*) }

At (*the Borough of Manhattan, City and County of New York,*) in said (*Southern*) District of (*New York,*) on the

* It has been held that being absent from the country is not alone a sufficient reason.

Proof of Debt — Individual

(20th) day of (*December*, 1914,) came (*Frederick Lawson*,) of No. (76 *Broadway*, *Borough of Manhattan*, *City of New York*) and State of (*New York*,) in said (*Southern*) District of (*New York*,) and made oath, and says that the said (*Charles P. Lawson*,) the person (*against*)* whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of (*one hundred*) (\$100) dollars; that the consideration of said debt is as follows: (*professional services rendered the said bankrupt as his physician during the month of August, 1914, of the reasonable value and agreed price of \$100;*) that the said debt became due on (*September 1, 1914*,)† and that no note has been received for the said debt nor any judgment rendered thereon; that no part of said debt has been paid except (*twenty-five dollars paid on account thereof on October 1, 1914;*) that there are no set-offs or counterclaims to the same; that deponent has not, nor has any person by his order or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

(*FREDERICK LAWSON*,)

Creditor.

Subscribed and sworn to before me, this }
(20th) day of (*December*, 1914.) }

(*RICHARD FIELD*,)

Notary Public,

(*New York*) County.

* Or "by".

† See General Orders XXI, i.

Proof of Debt — General Form

FORM No. 489

Another Form of Proof of Debt in Bankruptcy and Power of Attorney

In the District Court of the United States, for the
District of

In the Matter of Bankrupt.	}	In Bankruptcy, No.
--	---	----------------------------

STATE OF }
 County of } ss.:

At in the District of
 on the day of, 19.., came
 of in the county of, in
 said district of and made oath, and says:

(1) That he is the authorized agent of
 of, in the county of
 and State of

(2) That he is one of the partnership firm of
, consisting of himself and
 of

(3) That he is the *treasurer* of the
, a corporation incorporated by and under the laws
 of the State of and carrying on business at
 in the county of and State of
 and that he is duly authorized to make this proof.

(4) That the said, the
 person whom a petition for adjudication of bankruptcy
 has been filed, was, at or before the filing of said petition and
 still is, justly and duly indebted to said
 (name of creditor)
 in the sum of
 dollars (\$.....)

(5) That the consideration of said debt is as follows:

Letter of Attorney

(5a) That the date of maturity of said debt is

(5b) That no note has been received nor judgment recovered therefor [*except*

(6) That no part of said debt has been paid [*except*

(7) That there are no set-offs or counterclaims to the same [*except*

(8) That said creditor has not, nor has any person by order of said creditor, or to the knowledge or belief of said deponent for the use of said creditor, received any manner of security for said debt whatever, [*except the following, which are the only securities held by said creditor for said debt.*

(9) That this deposition is not made by the claimant [nor if it has been hereinbefore stated to be a corporation by its treasurer] in person because

and that deponent is duly authorized by his principal to make this deposition and that it is within his knowledge that the debt hereinbefore mentioned was incurred as and for the consideration, and said creditor is constituted as, hereinabove stated.

(10) LETTER OF ATTORNEY to
Attorney-at-Law. You are hereby authorized by said creditor by the person making the foregoing deposition who is duly authorized thereto, to appear for and represent said creditor and vote for said creditor in any proceedings, or meetings, which may be had or called in the above-entitled proceeding, in court, before the referee in bankruptcy or elsewhere and particularly to vote for said creditor in the choice of a trustee of said bankrupt whenever such election is held, to accept, or in your discretion oppose confirmation of, any composition offered by or in behalf of said bankrupt, and to receive and receipt for any and all moneys which may be or may become payable to said creditor therein or for or on account of said debt.

Proof of Debt — Instructions

In witness whereof said creditor has hereunto signed
name and affixed seal, when signing the deposition pre-
ceding, the day of, 191..

.....[L. S.]

Creditor.

.....[L. S.]

Creditor.

By

Subscribed, sworn to and acknowledged before }
me this..... day of, 191.. }

.....

Notary Public.

INSTRUCTIONS

This form combines with some slight verbal changes the Official Forms Nos. 31, 32, 33, 34, 35, 36, besides a general letter of attorney, abbreviated and modified from official form No. 20, and has been approved by prominent referees in bankruptcy, as suitable for all ordinary proofs of debt under the Bankruptcy Act of 1898. *Claims arising after the filing of the petition, or unliquidated damages or for contingent liability only are not provable in bankruptcy.* The clauses are numbered for convenience of reference only. It will be noticed that the introductory clause and those numbered 4, 5, 6, 7, 8, must be used in every proof, while circumstances determine when to use the others. As to clauses 1, 2, 3, 9, see instructions B, C, D, E. (The Orders and Official Forms do not expressly authorize proof by agent in case of debt to partnership or corporation nor when required to be made by assignor but it is thought that the act itself does so by fair construction.) F, G, H, refer to certain uses of clause 5, F to clauses 5a and 5b, I to clause 10, and A, J, K, L, to every proof. Extra space in any clause may be secured by attaching paper.

(A) *In every proof*, those who may make proofs are the owners of the debts respectively at the time of the proof (except in the case of claims assigned after the filing of the petition and

Proof of Debt — Instructions

then the owners at that time,) and their agents or officers who can make the statements required according to the circumstances as pointed out in the Instructions where sufficient reason why it should not be made by the owner (or the designated officer, if a corporation,) is made to appear. Being out of the country is not alone a sufficient reason. The name of the court and bankrupt should be filled in at the top. The number may be supplied later. Also fill in the blank spaces shown by the dotted lines, according to the facts in the introductory clause, and in the clause marked 4. In proof made by the assignor, strike out clause 10, and "and still is" in clause 4, and the fact of the assignment and the name of the assignee may be given in any space not otherwise used. In filling in clause 5 observe F, G, or H, if the claim be of the kind there italicized. In clauses 6, 7, 8, if the printed part be true without exception strike out the word "except" and what follows. Strike out all the clauses, parts and words inapplicable or not intended to be used, and observe instructions J, K, L, as to execution, etc. Immaterial errors will be disregarded or corrected.

(B) *For proof of debt to individual by himself* strike out clauses 1, 2, 3, 9.

(C) *For proof of debt by agent* all of clauses 1 and 9 are necessary. Fill them in and strike out clauses 2, 3. In clause 1 it is better to add a statement showing, if the creditor be a firm, that fact and the names of its members, and if a corporation that fact and the State in which incorporated.

(D) *For proof of debt to partnership by a member* fill in clause 2 and strike out clauses 1, 3, 9.

(E) *For proof of debt to corporation by its treasurer* fill in clause 3 and strike out clauses 1, 2, 9. No other officer is authorized to make proof of claim of a corporation, unless there be no treasurer. In that case it may be made by the officer whose duties most nearly correspond to those of a treasurer, and he should use clause 9, stating those facts there on the dotted lines, also properly change the word "treasurer" in clause 3, and strike out clauses 1, 2 and all of clause 9 below the dotted lines.

(F) Clauses 5a and 5b are not required to be used except for debts founded on *open account*, when they are required, and

Proof of Debt — Instructions

the date required to be inserted in clause 5a in case of an account of several items is the "average due date." There is no general rule requiring a statement of account to be furnished, but it is generally advisable to attach an itemized statement to proof of debt if practicable, referring to it in clause 5 as, for instance, "goods sold per statement attached."

(G) In proving *on note or other instrument in writing*, the *original note or other instrument must be attached*, or if lost or destroyed that fact and the circumstances must be stated in clause 5. Originals will be returned after allowance or disallowance of claim, if copies be supplied. Hence, attach copies also.

(H) In proving debt founded on *judgment*, clause 5 should include a full description of the judgment, with the date and place of entry, or a transcript may be attached and there referred to, as for instance, "judgment of which transcript is attached." If the judgment was recovered after the filing of the petition in bankruptcy, the transcript of proof should show the damages and costs separately, and the proof the amount of costs "incurred in good faith" before such filing.

(I) To use clause 10, *letter of attorney*, insert name of attorney or firm of attorneys if not already done, also date, and strike out any provision not desired, to suit circumstances. A letter of attorney is not essential to the proof of the debt. One is printed on this blank for use before those courts and referees which require attorneys to show written authority, but it would seem that an attorney of the United States District Courts under a general retainer which may be unwritten, needs no letter of attorney to act for a creditor in a bankruptcy proceeding. (See 1 *Am. B. N.* 205, and *Re Grasser*, 5 *Am. B. Rep.* 32.)

(J) *In Signing*, the person executing should sign his individual name on the first signature line in every case. If he be the individual creditor and clause 10 is used write "L. S." or attach *seal* after his name. In case of a firm or corporation the firm or corporate name should be written on second signature line, and if clause 10 is used add "L. S." or attach a *seal* for the firm or imprint the *corporate seal* for the corporation and let the person signing again write his own name on the last line adding in case of a corporation "its treasurer" if he be such.

Proof of Debt — Instructions

(K) After signing, the proof may be *sworn* to and letter of attorney *acknowledged* before a referee in bankruptcy, any officer authorized to administer oaths in United States Courts, any United States diplomatic or consular officer in a foreign country, or any officer authorized to administer oaths under the law of the State where made, and the latter need not use seal except in the States whose laws require it on other affidavits generally for use there. "County clerk's certificates" are not necessary. If clause 10 be omitted strike out "and acknowledged."

(L) *On the outside* make suitable changes when debt is secured, or general letter of attorney is not used. The *address* of the creditor should be given to insure the proper direction of notices of proceedings.

MECHANIC'S LIEN NOTICES

Subdivision 4 of § 9 of the Mechanic's Lien Law was materially amended by chap. 507 of the Laws of 1916. Prior thereto liens could be filed for labor "*to be performed*," and for materials "*to be furnished*". The effect of this amendment appears to limit the lien to the value or agreed price of the labor "*performed*" and the materials "*furnished*" up to the time of filing the notice and in addition thereto, the value or agreed price of "*materials actually manufactured for, but not delivered*". The result of this amendment is to prohibit the lienor from claiming a lien in advance of the performance of the labor or the actual furnishing of the material, except as stated.

This amendment requires the filing of successive notices as the work progresses as in the case of liens upon public improvements.

In drawing the notice of lien, the disjunctive "or" should be avoided. Do not state that "the agreed price or value the amount unpaid for such labor or materials" A close adherence to the language of the statute is dangerous.

State: The amount unpaid for such labor is and the amount unpaid for materials furnished is

This is the information which the statute intends and requires shall be stated specifically, and if there is an agreed price, state the agreed price *and* value of the labor performed is and the agreed price *and* value of the materials furnished is and the agreed price *and* value of materials actually manufactured for but not delivered to the real property is

Subdivision 1 of § 9 of the Lien Law requires the notice to state:

"The name and residence of the lienor; and if the lienor is a partnership or a corporation the business address of such firm or corporation, and if a foreign corporation its principal place of business in this State." If the lienor is a partnership, it has been held that the name and residence of each partner should be stated. (*Kane v. Hutkoff*, 81 App. Div. 105.) The same court has also held that in the case of partnership lien against a public improvement, the business address of the firm is sufficient. (*Post & McCord v. City of N. Y.*, 86 Misc. 300, aff'd 166 App. Div. 919.)

Filing of Notice

The notice of lien may be filed at any time during the progress of the work and the furnishing of the materials, or in the case of a lien against real property, within four months after the completion of the contract, or the final performance of the work, or the final furnishing of the materials, dating from the last item of work performed or materials furnished. The notice of lien must be filed in the clerk's office of the county where the property is situated. If such property is situated in two or more counties, the notice of lien shall be filed in the office of the clerk of each of such counties.

A notice of lien against a public improvement must be filed within thirty days after the completion and acceptance of the improvement and must be filed with the head of the department, board or bureau having charge of the improvement and also filed and docketed with the municipal or state financial officer having control of the funds applicable to the improvement.

FORM No. 490**Notice of Mechanic's Lien — For Materials by Partnership Supplying Materials to Owner**

To the Clerk of the County of (*New York*) and to all others whom it may concern:

PLEASE TAKE NOTICE, that (*Paul Potts*,) residing at (*100 West 80th Street, Borough of Manhattan, New York City*) and (*William R. Nesbit*,) residing at (*861 West End Avenue, Borough of Manhattan, New York City*,) co-partners composing the firm of (*Potts & Nesbit*,) with business address and principal place of business at (*1133 Broadway, Borough of Manhattan, City of New York*,)

Have and claim a lien for the principal and interest of the value and agreed price of the materials hereinafter mentioned, upon the real property hereinafter described and upon the improvements, and hereby state:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners

 Notice — By Partnership — Materials

as far as known to the lienor are (*Schumar & Kaufman,*) and (*John Doe, the name "John Doe" being fictitious, his true name being unknown to lienor,*) owners of the fee.

The name of the persons by whom the lienors were employed and to whom they furnished such materials and with whom the contract was made are (*Schumar & Kaufman.*)

The material furnished and the agreed price and value thereof are as follows: (*front brick*) of the price and value of (\$298.60) for which a lien is claimed.

The amount unpaid to the lienor for such materials is (\$298.60,) for which amount a lien is claimed.

The time when the first and last items of materials were furnished is as follows:

First item of materials: (*April 11, 1916.*)

Last item of materials: (*April 11, 1916.*)

The property subject to the lien is situated in (*the Borough of Manhattan, City of New York, on the north side of 152nd Street, 150 feet west of Broadway, being 100 feet wide, front and rear, by about 100 feet deep, on each side and its street number being 251 West 152nd Street, being two five-story brick and stone tenement houses.*)

That all the materials for which this lien is claimed have been actually furnished.

That said materials were furnished for and used in the improvement of the real property hereinbefore described.

That four months have not elapsed dating from the last item of materials furnished, nor since the completion of the contract, nor since the final furnishing of the materials, for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*May 17, 1916.*)

(*POTTS & NESBIT,*)

By (*Frank W. Ames,*) as Agent.

STATE OF NEW YORK, }
 (*City and*) County of (*New York,*) } ss.:
 (*Borough of Manhattan,*) }

(*Frank W. Ames,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien; that he

Notice — By Domestic Corporation — Materials

has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(FRANK W. AMES.)

Sworn to before me, this }
(17th) day of (May, 1916.) }

(FREEMAN C. OLD,)

Notary Public,

(New York) County.

FORM No. 491

**Notice of Mechanic's Lien — By Domestic Corporation for Materials
Supplied to Owner, a Domestic Corporation**

To the Clerk of the County of (*New York*,) and to all others
whom it may concern:

PLEASE TAKE NOTICE, that (*Atlantic Cement Company*,) a domestic corporation residing at and with business address and principal place of business at (*5 East 42nd Street, Manhattan, New York City*,)

Has and claims a lien for the principal and interest of the value and agreed price of the materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvements, and hereby states:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor are (*The 140th Street Company, The Lawrence Building Company*) and John Doe, said name "John Doe" being fictitious, his true name being unknown to lienor, owners of the fee.

The name of the person by whom the lienor was employed and to whom it furnished such materials and with whom the contract was made is (*the 140th Street Company*,) acting for itself and the owners.

The material furnished and the agreed price and value thereof are as follows: (*brick, lime, cement and general building materials*) of the price and value of (\$2,000, the said amount not

 Notice — By Domestic Corporation — Materials

having been included in the lien heretofore and on the 19th day of March, 1916, filed by said Atlantic Cement Company owing to erroneous statements, leaving a balance unpaid stated in said lien.)

The amount unpaid to the lienor for such materials is (\$2,000,) for which amount the lien is claimed (*with interest from March 2, 1916.*)

The time when the first and last items of materials were furnished is as follows:

First item of materials: (*October 21, 1915.*)

Last item of materials: (*March 2, 1916.*)

The property subject to the lien is situated in (*the Borough of Manhattan, City of New York, on the north side of 139th Street, and on the south side of 140th Street, 75 feet west of Broadway, being 125 feet wide, front and rear, by 200 feet deep, on each side, its street number being 251 West 139th Street, being five story brick and stone tenements.*)

That all the materials for which this lien is claimed have been actually furnished.

That said materials were furnished for and used in the improvement of the real property hereinbefore described.

That four months have not elapsed dating from the last item of materials furnished, nor since the completion of the contract, nor since the final furnishing of the materials, for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*April 25, 1916.*)

(*ATLANTIC CEMENT COMPANY,*)

By (*William Jones*) as Agent.

STATE OF NEW YORK,	} ss.:
(<i>City and</i>) County of (<i>New York,</i>)	
(<i>Borough of Manhattan,</i>)	

(*William Jones,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as

Notice — By Individual — Materials

to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*WILLIAM JONES.*)

Sworn to before me, this }
(25th) day of (*April*, 1916.) }
(*FREEMAN C. OLD*,)

Notary Public,
(*N. Y.*) Co.

FORM No. 492

**Notice of Mechanic's Lien — By an Individual for Materials Supplied
to Contractor, an Individual**

To the Clerk of the County of (*Bronx*.) and to all others whom it
may concern:

PLEASE TAKE NOTICE, that (*Henry Holt*.) residing at
(*southeast corner of 93rd Street and Fifth Avenue, Borough of
Manhattan, New York City*.)

Has and claims a lien for the principal and interest of the value
and agreed price of the materials hereinafter mentioned, upon
the real property hereinafter described, and upon the improve-
ments, and hereby states:

The names of the owners of the real property against whose
interest therein a lien is claimed, and the interest of the owners
as far as known to the lienor are (*Robert Emil*) and John
Doe, said name "John Doe" being fictitious, his true name being
unknown to the lienor, owners of the fee.

The name of the person by whom the lienor was employed and
to whom he furnished such materials and with whom the contract
was made is (*William Gans*.)

The materials furnished and the agreed price and value thereof
are as follows: (*lumber and timber*) of the agreed price and value
of (\$107.28.)

The amount unpaid to the lienor for such materials is (\$107.28)
for which amount the lien is claimed.

Notice — By Individual — Materials

The time when the first and last items of materials were furnished is as follows:

First item of materials: (*March 2, 1916.*)

Last item of materials: (*March 2, 1916.*)

The property subject to the lien is situated in (*the Borough of Bronx, City of New York, on the north side of Freeman street, 132 feet west of Southern Boulevard, being 125 feet wide, front and rear, by 100 feet deep, on each side, and its street numbers being 1133-1135-1137-1139-1141, and being 4 five-story brick and stone tenements.*)

That all the materials for which this lien is claimed have been actually furnished.

That said materials were furnished for and used in the improvement of the real property hereinbefore described.

That four months have not elapsed dating from the last item of materials furnished, nor since the completion of the contract, nor since the final furnishing of the materials, for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*April 21, 1916.*)

(*HENRY HOLT,*)

By (*William Jones,*) as Agent

STATE OF NEW YORK,
 (*City and*) County of (*New York,*) } ss.:
 (*Borough of Manhattan,*) }

(*William Jones,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*WILLIAM JONES.*)

Sworn to before me, this }
 (21st) day of (*April, 1916.*) }

(*FREEMAN C. OLD,*)

Notary Public,

(*New York*) County.

FORM No. 493**Notice of Mechanic's Lien — By Domestic Corporation Against Owner and Partnership Contractors for Materials Supplied to Contractors**

To the Clerk of the County of (*New York*), and to all others whom it may concern:

PLEASE TAKE NOTICE, that (*The Empire Brick Company*), a domestic corporation residing at and with business address and principal place of business at (*847 Broadway, Borough of Manhattan, New York City*),

Has and claims a lien for the principal and interest of the value and agreed price of the materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvements, and hereby states:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor are (*Roe & Smith*), and John Doe, said name "John Doe" being fictitious, his true name being unknown to the lienor, owners of the fee.

The name of the person by whom the lienor was employed and to whom it furnished such materials, and with whom the contract was made is (*Joseph Roe*), acting for himself and the owners.

The materials furnished and the agreed price and value thereof are as follows: (*brick, lime, cement and general masons' materials*), of the price and value of (\$22,271.75) of which the sum of (\$21,142.05) has been paid on account, leaving a balance unpaid of (\$1,129.70.)

The amount unpaid to the lienor for said materials is (\$1,129.70,) for which amount a lien is claimed, with interest from (*January 18, 1916*.)

The time when the first and last items of materials were furnished is as follows:

First item of materials: (*June 31, 1915*.)

Last item of materials: (*January 8, 1916*.)

The property subject to the lien is situated in (*the Borough of Manhattan, City of New York, on the south side of 134th Street, 100 feet west of Amsterdam Avenue, being 293 feet wide, front*

 Notice — By Domestic Corporation — Materials

and rear, by about 100 feet deep, on each side, and its street numbers being 251 West 134th Street, being 7 five story brick and stone tenements.)

That all the materials for which this lien is claimed have been actually furnished.

That said materials were furnished for, and used in the improvement of the real property hereinbefore described.

That four months have not elapsed, dating from the last item of materials furnished, nor since the completion of the contract, nor since the final furnishing of the materials, for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*April 7, 1916.*)

(*EMPIRE BRICK COMPANY,*)

By (*William Jones,*) as Agent.

STATE OF NEW YORK, }
 (*City and*) County of (*New York,*) } ss.:
 (*Borough of Manhattan.*) }

(*William Jones,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien. That he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*WILLIAM JONES.*)

Sworn to before me, this }
 (*7th*) day of (*April, 1916.*) }

(*FREEMAN C. OLD,*)

Notary Public,

(*New York*) County.

FORM No. 494

**Notice of Mechanic's Lien—By Domestic Corporation Against Owner,
Individual, for Materials and Labor Furnished to Owner**

To the Clerk of the County of (*Bronx*) and to all others whom it may concern:

PLEASE TAKE NOTICE, that (*The Tile & Marble Works,*) a domestic corporation residing at and with business address and principal place of business at (*31 East One Hundred and Thirty-fifth street, Borough of Bronx, New York City,*)

Has and claims a lien for principal and interest of the value and agreed price of the labor and materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvements, and hereby states:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor, are (*Louis Lowrey,*) and John Doe, said name "John Doe," being fictitious, his true name being unknown to the lienor, owners of the fee.

The name of the person by whom the lienor was employed and to whom it furnished such labor and materials, and with whom the contract was made, is (*Louis Lowrey.*)

The labor performed and the materials furnished and the agreed price and value thereof are as follows:

(*Marble and tile and labor in placing and setting same,*) of the agreed price and value of (\$875) and extra materials, consisting of (*two marble steps and labor in placing and setting same under stairs,*) of the agreed price and value of (\$10,) in all (\$885,) of which the sum of (\$600) has been paid on account, leaving a balance unpaid of (\$285.)

The amount unpaid to the lienor for such labor and materials is (\$285) for which amount a lien is claimed.

The time when the first and last items of work were performed and materials were furnished is as follows: First item of work and extra work, (*December 22, 1915.*) Last item of work and extra work (*March 24, 1916.*) First item of materials and extra materials, (*December 22, 1915.*) Last item of materials and extra materials, (*March 24, 1916.*)

 Notice — By Domestic Corporation — Labor and Materials

The property subject to the lien is situated in (*the Borough of Manhattan, City of New York, on the south side of One Hundred and Twenty-seventh street, 64 feet west of Lexington avenue, being 36 feet wide, front and rear, by about 100 feet deep on each side, and its street number being 35 West 127th street, being one six-story brick and stone apartment*).

That all the materials and labor for which this lien is claimed have been actually furnished and performed.

That said labor and materials were performed and furnished for and used in the improvement of the real property hereinbefore described.

That four months have not elapsed, dating from the last item of work performed, and dating from the last item of materials furnished, nor since the completion of the contract, nor since the final performance of the work, nor since the final furnishing of the materials for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*April 2, 1916.*)

(*THE TILE & MARBLE WORKS.*)

By (*William Jones*) as Agent.

STATE OF NEW YORK,
 (*City and*) County of (*New York,*) } ss.:
 (*Borough of Manhattan,*) }

(*WILLIAM JONES,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien. That he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*WILLIAM JONES.*)

Sworn to before me, this }
 (2d) day of (*April, 1916.*) }

(*FREEMAN C. OLD,*)

Notary Public,

(*New York*) County.

FORM No. 495

Notice of Mechanic's Lien — By Domestic Corporation Against Individual Owner and Copartnership Contractor for Labor and Materials Furnished to Contractor

To the Clerk of the County of (*Bronx*,) and to all others whom it may concern:

· PLEASE TAKE NOTICE, that (*The Tile & Marble Works*,) a domestic corporation residing at and with business address and with principal place of business at (*31 East 135th Street, Borough of Bronx, New York City*,)

Has and claims a lien for principal and interest of the value and agreed price of the labor and materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvements, and hereby states:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor, are (*Louis Beer*) and (*Harris Sacks and Philip Manly, the partnership of Sacks & Manly*,) and John Doe, the name "John Doe" being fictitious, his true name being unknown to the lienor, owners of the fee.

The name of the persons by whom the lienor was employed and to whom it furnished such labor and materials and with whom the contract was made are (*Sacks & Manly*,) acting for themselves and the owners.

The labor performed and the materials furnished and the agreed price and value thereof, are as follows: materials consisting of (*tile and the labor in placing and setting the same*) of the agreed price and value of (\$637.50) of which the sum of (\$496.00,) has been paid on account, leaving a balance of (\$141.00) unpaid.

The amount unpaid to the lienor for such labor and materials is (\$141.00,) for which amount the lien is claimed.

The time when the first and last items of work were performed and materials were furnished is as follows:

First item of work (*January 10, 1916*,) last item of work (*April 25, 1916*,) first item of materials (*January 10, 1916*,) last item of materials (*April 12, 1916*,)

The property subject to the lien is situated in (*the Borough of Bronx, City of New York, on the west side of Prospect Avenue, 500 feet north of 152d Street, being 63 feet wide, front and rear,*

 Notice — By Domestic Corporation — Labor and Materials

by 100 feet deep, on each side, and its street number being 152 Prospect Avenue, being two five-story brick tenements.)

That all the materials and labor for which this lien is claimed have been actually furnished and performed.

That said labor and materials were performed and furnished for and used in the improvement of the real property hereinbefore described.

That four months have not elapsed dating from last item of work performed, and dating from last item of materials furnished, nor since the completion of the contract, nor since the final performance of the work, nor since the final furnishing of the materials for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*May 3, 1916.*)

(*THE TILE & MARBLE WORKS,*)

By (*William Jones,*) as Agent.

STATE OF NEW YORK, }
 County of (*New York,*) } ss.:

(*WILLIAM JONES,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

(*WILLIAM JONES.*)

Sworn to before me, this }
 (3d) day of (*May, 1916.*) }

(*STEPHEN WADE,*)

Notary Public,

(*Bronx*) Co.

(*Cert. filed in New York County.*)

FORM No. 496

**Notice of Mechanic's Lien — By an Individual Against Owner,
Individual, for Labor and Material Supplied to Owner**

To the Clerk of the County of (*New York*) and to all others
whom it may concern:

PLEASE TAKE NOTICE, that (*Adam Hoff*,) residing at
(*138 West 119th Street, Manhattan, New York City*),

Has and claims a lien for principal and interest of the value
and agreed price of the labor and materials hereinafter mentioned,
upon the real property hereinafter described, and upon the im-
provements, and hereby states:

The names of the owners of the real property against whose
interest therein a lien is claimed, and the interest of the owners
as far as known to the lienor, are (*Peter Beren*) and John Doe,
said name "John Doe" being fictitious, his true name being
unknown to lienor, owners of the fee.

The name of the person by whom the lienor was employed and
to whom he furnished such labor and materials and with whom
the contract was made is (*Peter Beren*.)

The labor performed and the materials furnished and the agreed
price and value thereof, are as follows: (*fire escapes and shutters
and labor in erecting, placing and setting same*,) of the agreed
price and value of (\$532.00,) of which the amount of (\$400.00)
has been paid on account, leaving a balance unpaid of (\$132.00.)

The amount unpaid to the lienor for such labor and materials
is (\$132.00,) for which amount the lien is claimed.

The time when the first and last items of materials were fur-
nished and first and last items of work done are as follows:

First item of work (*June 12, 1916*,) last item of work (*Feb-
ruary 12, 1916*,) first item of materials (*June 12, 1915*,) last
item of materials (*February 12, 1916*.)

The property subject to the lien is situated in the (*Borough of
Manhattan, City of New York, on the east side of Broadway,
between Bleecker and Bond Streets, 30 feet 5 inches wide, front
and rear, by 100 feet deep, on each side, and its street number
being 648 Broadway*.)

That all the materials and labor for which this lien is claimed
have been actually furnished and performed.

Notice — By Individual — Labor and Materials

That said labor and materials were performed and furnished for and used in the improvement of the real property hereinbefore described.

That four months have not elapsed dating from last item of work performed, and dating from last item of materials furnished, nor since the completion of the contract, nor since the final performance of the work, nor since the final furnishing of the materials for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*April 27, 1916.*)

(*ADAM HOFF,*)

By (*Stephen W. Livingston,*) as Agent.

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*STEPHEN W. LIVINGSTON,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*STEPHEN W. LIVINGSTON.*)

Sworn to before me, this }
(*27th*) day of (*April, 1916.*) }
(*FREEMAN C. OLD,*)

Notary Public,

(*New York*) County.

FORM No. 497

Notice of Mechanic's Lien — By a Foreign Corporation Against Contractor, Domestic Corporation, for Materials Supplied to Contractor

To the Clerk of the County of (*New York*,) and to all others whom it may concern:

PLEASE TAKE NOTICE, that (*The Press Brick Company*,) a foreign corporation, residing at and whose business address and principal place of business are (*Union Trust Building, St. Louis, Mo.*), whose principal place of business in the State of New York is (*289 4th Avenue, Borough of Manhattan, City of New York*,)

Has and claims a lien for the principal and interest of the value and agreed price of the materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvements, and hereby states:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor are (*Ryan Realty Company*,) and John Doe, said name "John Doe" being fictitious, his true name being unknown to lienor, owners of the fee.

The name of the person by whom the lienor was employed and to whom he furnished such materials, and with whom the contract was made is (*Ryan Realty Company*.)

The materials furnished and the agreed price and value thereof are as follows: materials consisting of (*front brick*) of the price and value of (\$1,909.50,) of which (\$1,681.50) has been paid on account, and leaving a balance of (\$228.00) unpaid.

The amount unpaid to the lienor for such materials is (\$228.00,) for which amount a lien is claimed.

The time when the first and last items of materials were furnished is as follows:

First item of materials: (*December 7, 1915.*)

Last item of materials: (*February 5, 1916.*)

The property subject to the lien is situated in (*the Borough of Manhattan, City of New York, on the southwest corner of Manhattan Avenue and 110th Street, being 100 feet and . . . inches wide, front and rear, by 100 feet and . . . inches deep, on each side, its street number being 491 Manhattan Avenue, and being one six-story brick and stone tenement.*)

 Notice — By Agent of Corporation — Materials

That all the materials for which this lien is claimed have been actually furnished.

That said materials were furnished for and used in the improvement of the real property hereinbefore described.

That four months have not elapsed dating from the last item of materials furnished, nor since the completion of the contract, nor since the final furnishing of the materials, for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*May 3, 1916.*)

(*THE PRESS BRICK COMPANY,*)

By (*William Jones,*) as Agent.

STATE OF NEW YORK, }
 County of (*New York,*) } ss.:

(*WILLIAM JONES,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*WILLIAM JONES,*)

Sworn to before me, this }
 (3d) day of (*May, 1916.*) }

(*JAMES WATSON,*)

(*Com'r of Deeds for the City of New York.*)

 FORM No. 498

Notice of Mechanic's Lien — By Agent of Corporation, Supplying
 Material to Subcontractor, Corporation

To the Clerk of the County of (*New York*) and to all others
 whom it may concern:

PLEASE TAKE NOTICE, that (*The Iron Company,*) a domestic corporation residing at and whose business address and principal place of business is (*446 Water Street, Borough of*

Notice — By Agent of Corporation — Materials

Manhattan, New York City,) has and claims a lien for the principal and interest of the value and agreed price of the materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvements, and hereby states:

The name of the owner of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor is (*Title Guarantee & Trust Company*) and (*John Doe, said name, John Doe, being fictitious, his true name being unknown to lienor,*) owners of the fee.

The name of the persons by whom the lienor was employed, and to whom it furnished such materials and with whom the contract was made are (*Edward Coleby Co.,*) sub-contractors under (*Thompson Starrett Company,*) contractor.

The material furnished and the agreed price and value thereof are as follows: Material consisting of (*wrought iron pipe and fillings*) of the agreed price and value of (\$4,158.15,) of which (\$3,000) has been paid on account (*and \$847.19 credited on account for materials returned,*) leaving balance of (\$311.45) unpaid.

The amount unpaid to the lienor for such materials is (\$311.45,) for which amount a lien is claimed.

The time when the first and last items of materials were furnished is as follows:

First item of materials: (*November 15th, 1915.*)

Last item of materials: (*January 21st, 1916.*)

The property subject to the lien is situated in the (*Borough of Manhattan, City of New York, on the east side of Broadway, between Maiden Lane and John Street, being 75 feet and 6 inches wide, front and rear, by 118 feet and 11 inches deep, on each side and its street number being 176 and 178 Broadway, and being one 10-story brick and stone office building.*)

That all materials for which this lien is claimed have been actually furnished.

That said materials were furnished for and used in the improvement of the real property hereinbefore described.

That four months have not elapsed dating from the last item of materials furnished, nor since the completion of the contract, nor since the final furnishing of the materials, for which this lien is claimed.

 Notice — By Individual — Labor

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*April 18, 1916.*)

(*THE IRON COMPANY,*)

By (*Wm. Smith,*) Agent.

STATE OF NEW YORK, } ss.:
 County of (*New York,*) }

(*WILLIAM SMITH,*) being duly sworn, says that he is agent of the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*WM. SMITH.*)

Sworn to before me, this }
 (18th) day of (*April, 1916.*) }

(*FREEMAN E. OLD,*)

Notary Public,
 (*New York*) County.

 FORM No. 499

Notice of Mechanic's Lien — For Labor — Individual Against Corporation

To Clerk of the County of (*New York:*)

TAKE NOTICE that I, (*John J. Dunn,*) have and claim a lien for the principal and interest of the value and the agreed price of the labor and materials hereinafter mentioned upon the real property improved and upon such improvement hereinafter described, and I do hereby state that

1. The name and residence of the lienor is (*John J. Dunn, 13 East 65th Street, Borough of Manhattan, New York City.*)
2. The name of the owner of the real property against whose interest therein a lien is claimed is (*The Tenth Street Company*) and ("*John Doe,*" said name "*John Doe*" being fictitious, his

Notice — By Individual — Labor

true name being unknown to lienor,) and the interest of said owners, as far as known to the lienor is as owner of the fee.

3. The name of the person by whom the lienor was employed and the person with whom the contract was made was (*The One Hundred and Tenth Street Company.*)

4. The labor performed and the agreed price and value thereof are as follows, respectively: (*Excavating*) and the agreed price was (\$309.00.)

5. The amount unpaid to the lienor therefor is (\$309.00.)

6. The time when the first items of work were performed is (*Jan'y 5, 1916.*)

The time when the last item of work was performed is (*Jan'y 17, 1916.*)

The property subject to the lien situated in the (*Borough of Manhattan, City of New York,*) and a description sufficient for identification and its location is as follows:

It is situated in (*the Borough of Manhattan, City of New York, on the north side of Cathedral Parkway, 100 feet west of Broadway, being 75 feet wide, front and rear, by 90 feet deep on each side and whose number is 467 Cathedral Parkway.*)

That all the labor for which this lien is claimed has been actually performed.

That said labor was performed for the improvement of the real property hereinbefore described.

That four months have not elapsed, dating from the last item, of work performed, nor since the completion of the contract, nor since the final performance of the work, for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated (*April 3, 1916.*)

(*JOHN J. DUNN.*)

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*JOHN J. DUNN,*) being duly sworn, says that he is the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as to

 Notice — Against Public Improvement

the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(JOHN J. DUNN.)

Sworn to before me, this }
(3d) day of (April, 1916.) }

(JOHN J. GLEN,)

Notary Public,

(New York) County.

 FORM No. 500

Notice of Mechanic's Lien — On Account of Public Improvement

To the (*Comptroller of the City of New York, and the Department of Public Charities:*)

PLEASE TAKE NOTICE, that (*Adam Happel,*) residing at (*138 West 119th Street, in the Borough of Manhattan, City of New York,*) has and claims a lien for the principal and interest of the value and price of the labor and materials hereinafter mentioned upon the moneys in the control of the (*City of New York,*) and upon the moneys of such municipal corporation applicable to the construction of the public improvement hereinafter mentioned to the extent of the amount due or to become due under and on the contract with said municipal corporation hereinafter described, which lien is based upon the following facts:

1. The names of the contractors (*or subcontractors*)* for whom the labor was performed and materials furnished are (*Herman Lippel & Brothers.*)

2. The amount due the lienor is (\$210.60,) and the date when due is (*January 6, 1915.*)

3. A description of the public improvement upon which the labor was performed and materials expended is as follows:

(*The new reception building at the City Hospital at Blackwell's Island, New York City.*)

4. The kind of labor performed and materials furnished to such public improvement is as follows:

* If the name of the contractor or subcontractor is not known to the lienor, it may be so stated.

Notice — Against Public Improvement

(Materials consisting of columns, shoes, angles and wood screws and labor in placing and setting the same of the price and value of \$210.60.)

5. A general description of the contract pursuant to which such public improvement was constructed is as follows:

(A contract between Herman F. Lippel Brothers and the City of New York for improvement, described in paragraph 3 above, contract No. 10,106, dated April 16, 1914, for \$20,900.)

6. This notice is filed pursuant to "The Lien Law" of the State of New York and all acts of the Legislature of the State of New York amending or extending the same or providing for filing mechanics' liens on account of public improvements. The labor and materials aforesaid were actually used in the construction of the said public improvement and in the execution and completion of said contract with said municipal corporation.

7. The statements in paragraphs 1 to 6 in the foregoing notice are alleged upon information and belief.

Dated, *(New York, March 31, 1915.)*

(ADAM HAPPEL.)

(Verification)

FORM No. 501**Notice of Lien on Account of Public Improvement**

To the *(Comptroller of the City of New York and the Department of the Armory Board:)*

PLEASE TAKE NOTICE, that *(Columbia Company,)* a *(foreign)* corporation organized under the laws of the State of *(New Jersey,)* residing at and with business address and principal place of business at *(Newark, New Jersey,)* and with business address and principal place of business in this State at *(No. 287 Broadway, Manhattan, New York City,)* has and claims a lien for the principal and interest of the value and price of the labor and materials hereinafter mentioned upon the moneys in the control of the *(City of New York,)* and upon the moneys of such municipal corporation applicable to the construction of the public improvement hereinafter mentioned, to the extent of the amount

Notice — Against Public Improvement

due or to become due under and on the contract with said municipal corporation hereinafter described, which lien is based upon the following facts:

1. The names of the contractors [*or subcontractors*] for whom the labor was performed and material furnished are (*Root & Mann and John Morse, contractors [or subcontractors] in the Borough of Manhattan, City of New York.*)

2. The amount due the lienor is (\$7,000.00,) and the date when due is (*April 15, 1916.*)

3. A description of the public improvement upon which the labor was performed and materials expended are as follows: (*erection and completion of a new armory building for the 62d Regiment, N. G. S. N. Y., on the westerly side of Lexington Avenue, extending from 27th to 28th Streets, Borough of Manhattan, New York City.*)

4. The kind of labor performed and materials furnished is as follows: (*Architectural iron work and labor in erecting and setting same of the price and value of \$18,000,*) of which the sum of (\$11,000) has been paid on account, leaving a balance unpaid of (\$7,000.)

5. A general description of the contract pursuant to which such public improvement was constructed is as follows: (*Contract between John Morse and the Borough of Manhattan, City of New York, for the public improvement described in paragraph 3, supra, for the sum of \$300,000. Contract No. 10,600,*) dated (*November 17, 1914,*) filed (*November 30, 1914,*) in the office of the (*Comptroller*) of the (*City of New York.*)

6. This notice is filed pursuant to "The Lien Law" of the State of New York; and all acts of the Legislature of the State of New York amending or extending the same or providing for filing mechanics' liens on account of public improvements. The labor and materials aforesaid were actually used in the construction of said public improvement and in the execution and completion of said contract with said municipal corporation.

7. The statements and matters in paragraphs numbered 1 to 6 in the foregoing notice are alleged on information and belief.

Dated, (*October 3, 1916.*)

(COLUMBIA COMPANY,)

By (*Oliver Engel,*)

(*Secretary and Agent.*)

Affidavit to Continue

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

(*OLIVER ENGEL*,) being duly sworn, says:

That he is (*the secretary and agent of*) the lienor mentioned in the foregoing notice of lien. That he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. That the reason this verification is made by deponent and not by lienor is that lienor is a corporation and deponent is an officer thereof; to wit, the secretary.

(*OLIVER ENGEL*.)

Sworn to before me, this }
 (3d) day of (*October*, 1916.) }
 (*FRANK BOND*,)

Notary Public,
 (*New York*) County.

FORM No. 502

Affidavit for Continuation of Mechanic's Lien

SUPREME COURT,
 (*New York*) County.

In the Matter of the Application of
 (*THEODORE JOHNSON*)
 for an Order Continuing a Mechanic's
 Lien against Real Property.

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

(*THEODORE JOHNSON*,) being duly sworn, says: Prior to (*December 1*, 1913,) I performed the labor and furnished the materials set forth in the notice of lien hereinafter mentioned in and about the improvement of certain real property situate in (*the Borough of Manhattan, City of New York*,) more particularly described in the notice of lien hereto attached.

Affidavit to Continue

On the (*first*) day of (*December*, 1913,) I filed in the office of the clerk of the County of (*New York*,) a notice claiming a lien against the said real property on account of said labor and materials, as appears by the copy of said notice of lien hereto attached and made a part hereof, which notice was duly docketed on the (*first*) day of (*December*, 1913.)

Said notice of lien was filed within four months after the completion of said labor and the furnishing of said materials.

The name of the owner of said real property as stated in the annexed notice is (*Charles Woodward*,) and the name of the person by whom I was employed and to whom I furnished materials as stated in said notice is (*Charles Woodward*.)

Said lien will expire on the (*first*) day of (*December*, 1914,) and no action has been commenced or other proceedings taken to enforce this or any other mechanic's lien against said real property, and said lien has not been bonded, canceled or discharged, and the whole amount claimed thereunder is now due and payable. No steps have been taken to enforce said lien for the reason that an agreement has been entered into between (*Charles Woodward*,) the owner of said premises, and myself, providing for the payment of the amount claimed and said (*Woodward*) has requested that such action be deferred.

Deponent, therefore, asks that an order be entered continuing said lien for a period of one year.

No previous application for an order herein has been made to any court or judge.

(*THEODORE JOHNSON*.)

Sworn to before me, this }
(15th) day of (*November*, 1914.) }

(*ARNOLD GREEN*,)

Notary Public,

(*New York*) County.

If a continuance of the lien has already been had, facts showing the necessity for a further continuance should be stated. The fact that a lien has been discharged by filing a bond does not affect the duration of the lien. The lien will expire unless action commenced or an order continuing same is obtained within the time limited. (206 N. Y. 24.)

Order Continuing

FORM No. 503

Order Continuing Mechanic's Lien

At a Special Term, (*Part II*,) of the Supreme Court of the State of New York, held in and for the County of (*New York*,) at the County Court House in (*the Borough of Manhattan, City of New York*,) on the (*20th*) day of (*November, 1914*.)

PRESENT:

Hon. (*JOHN FORD*,)
Justice.

In the Matter of the Application of
(*THEODORE JOHNSON*)
for an Order Continuing a Mechanic's
Lien against Real Property.

On reading and filing the affidavit of (*Theodore Johnson*,) verified the (*15th*) day of (*November, 1914*,) and the notice of mechanic's lien thereto attached, and sufficient reason therefor to me appearing,

NOW, on motion of (*James J. Maxwell*,) attorney for said (*Theodore Johnson*,) it is

ORDERED, that the lien claimed by the said (*Johnson*) by his notice of lien filed (*December 1, 1913*,) at (*eleven*) o'clock, (*thirty*) minutes A. M., upon the following real property and the improvements thereon, to-wit: (*The twelve and one-half story hotel building, known as Hotel Woodson, situate at the corner formed by the intersection of the easterly side of Broadway, in the Borough of Manhattan, City of New York, with the southerly side of 53d street*,) of which hotel building (*Charles Woodward*) is the owner, for the improvement to-wit: (*The furnishing and setting of window glass in said hotel building*,) be and the same hereby is continued for a period of one year, and the clerk of the (*County of New York*) is hereby directed to make a new docket of the lien hereby continued as of the date of this order in the lien docket kept in his office for that purpose pursuant to law, and to note thereon that said lien is so continued by order of this court.

Enter:

(*J. F.*)

J. S. C.

Order Continuing — Public Improvement

FORM No. 504

Order Continuing Mechanic's Lien

At a Special Term of the Supreme Court, (*Part II*) thereof, held in and for the County of (*New York*) at the County Court House, in (*the Borough of Manhattan, County of New York,*) on the (*18th*) day of (*January, 1916.*)

PRESENT:

Hon. (*MITCHEL L. ERLANGER,*)

Justice.

In the Matter of the
(*Municipal Lien of \$4,708.40 filed*
by
THE FIREPROOFING COMPANY
against

FANNING and ROMER and the contract between Fanning and Romer and the CITY OF NEW YORK for the erection of New Public School No. 42 on Southwest Corner of Wendover Avenue and Washington Avenue, in the Borough of Bronx, City of New York.)

On reading and filing the affidavit of (*Henry M. Keaseby,*) verified the (*16th*) day of (*January, 1916,*) hereto annexed, and on motion of (*Potts & Ames,*) attorneys for (*The Fireproofing Company,*) the above-named lienor, it is

ORDERED, that the lien on a public improvement for the sum of (\$4,708.40) filed by (*The Fireproofing Company*) against (*Fanning and Romer,*) contractors, and the moneys due and to become due upon the contract between said (*Fanning and Romer*) and the (*City of New York*) for (*the erection of new public School No. 42 on the southwest corner of Wendover and Washington avenues in the Borough of Bronx, City of New York,*) filed on the (*23d*) day of (*April, 1915,*) in the office of the (*Comptroller of the City of New York,*) and in the office of the (*Department of Education of the City of New York,*) and thereafter continued by order of this court for six months from (*23d*)

Order Fixing Bond — Public Improvement

day of (*July*, 1915,) be, and the same hereby is continued for six months from the (23*d*) day of (*January*, 1916;) and it is further

ORDERED that the (*Comptroller of the City of New York*) make a new docket of the lien continued hereby.

Enter:

(*M. L. E.*)

J. S. C.

FORM No. 505**Order Fixing Amount of Undertaking to Discharge Lien—Against
Public Improvement**

At a Special Term (*Part II*) of the Supreme Court, held in and for the County of (*New York*,) at the County Court House in (*the Borough of Manhattan, City of New York*,) on the (23*d*) day of (*June*, 1915.)

PRESENT:

Hon. (*CLARENCE J. SHEARN*,)

Justice.

In the Matter of the Application of (<i>THE RIVER ENGINEERING COMPANY</i>) to have the lien filed by (<i>JOSEPH JONES</i> against the moneys appropriated by the City of New York for the construction of part of the Queens Conduit, in the Borough of Brooklyn,) discharged.

Upon the annexed petition of the (*RIVER ENGINEERING COMPANY*,) duly verified on the (23*d*) day of (*June*, 1915,) and on motion of (*Halsey I. Smith*,) attorney for the (*River Engineering Company*,) it is

ORDERED, that the sum of (\$7,500) be and the same hereby is fixed as the amount of the bond to be given by the said (*River*

Petition for Order to Fix Bond

Engineering Company) to discharge the lien filed herein by (*Joseph Jones*,) for the sum of (\$6,578.89) with interest, filed in the office of the (*Comptroller*) of the (*City of New York*) on the (*10th*) day of (*June*, 1915,) against the sum due and to become due from the (*City of New York*) to the said (*River Engineering Company*,) by virtue of a contract for construction of (*part of the Queens conduit in the Borough of Brooklyn, City of New York*.)

Enter:

(C. J. S.)

J. S. C.

FORM No. 506

**Petition for Order Fixing Amount of Undertaking to Discharge Lien
Against Public Improvement**SUPREME COURT — (*New York*) County.

In the Matter of the Application
of
(*THE RIVER ENGINEERING
COMPANY*)
to have the lien filed by (*JOSEPH
JONES* against the moneys appropriated by the *City of New York* for the construction of part of the *Queens Conduit, in the Borough of Brooklyn*.)
discharged.

The petition of the (*River Engineering Company*,) respectfully shows to the court:

First: That the said (*River Engineering Company*) has heretofore entered into a contract with the (*City of New York*) for the construction of (*part of the Queens conduit which is a portion of the Catskill aqueduct in the Borough of Brooklyn, City of New York*.)

Second: That on the (*10th*) day of (*June*, 1915, *Joseph Jones*) filed in the office of the (*Comptroller*) of the (*City of New York*,) a notice claiming a lien upon the moneys due and

Petition for Order to Fix Bond

to become due from the (*City of New York*) to the (*River Engineering Company*), its successors or assigns by virtue of the said contract for the construction of (*part of the Queens conduit*) at the aforementioned place.

Third: That the amount claimed by the lienor to be due is the sum of (\$6,578.89) with interest.

WHEREFORE, your petitioner desires to execute a bond, with proper surety, to the (*City of New York*) in a sum not less than the amount claimed in the notice of lien, conditioned for the payment of any judgment that might be recovered in any action to enforce the said alleged lien, pursuant to the provisions of the Lien Law of the State of New York, and asks that this Court direct the amount in which said bond shall be executed.

That no previous application has been made to any Court or Judge for the relief prayed for herein.

Dated, (*June 22nd, 1915.*)

(*RIVER ENGINEERING COMPANY,*)

By (*Walter B. Sandford, President.*)

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*WALTER B. SANDFORD,*) being duly sworn, says that he is (*President*) of the (*River Engineering Company,*) petitioner herein; that he knows the contents of the within petition and that the same are true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*WALTER B. SANDFORD.*)

Sworn to before me, this }
(*23d*) day of (*June, 1915.*) }

(*EDWARD JOYSTEN,*)

Notary Public, (*No. 1505*)

[SEAL]

(*New York*) County.

By Filing Surety Company Bond

FORM No. 507

Discharge of Lien—Against Public Improvement by Filing Surety Company Bond—Notice of Application for Order to Discharge LienSUPREME COURT—(*New York*) County.

In the Matter of the Application
of
(*THE RIVER ENGINEERING
COMPANY*)
to have the lien filed by (*JOSEPH
JONES* against the moneys applicable
to the construction of part of the
*Queens Conduit, in the Borough of
Brooklyn,*) discharged.

Sir:

PLEASE TAKE NOTICE that an undertaking, a copy of which is hereto annexed, will be presented to the Justice of the Supreme Court presiding at a Special Term, (*Part II*) thereof, to be held in and for the County of (*New York*) at the County Court House in the (*Borough of Manhattan, City of New York,*) on the (*12th*) day of (*July, 1915,*) at (*10:00*) A. M., for approval, and an application made to such Justice for an order discharging the lien created by notice filed by you on the (*10th*) day of (*June, 1915,*) in the office of the (*Comptroller*) of the (*City of New York*) upon the money due and to become due from the (*City of New York*) to (*The River Engineering Company,*) its successors or assigns, by virtue of a contract for the construction of (*part of the Queens conduit which is a portion of the Catskill aqueduct in the Borough of Brooklyn, City of New York,*) pursuant to the Lien Law of the State of New York.

Dated, (*New York, July 9, 1915.*)

Yours, etc.,

(*HALSEY I. SMITH,*)Attorney for (*The River Engineering
Company, Contractor,*)(*141 Broadway,*)(*Borough of Manhattan,*)(*New York City.*)

To

(*JOSEPH JONES,*) Esq.,

Lienor.

IF BOND EXECUTED BY A SURETY COMPANY

The execution of an undertaking by any fidelity or surety company authorized by the laws of this State to transact business is equivalent to the execution of an undertaking by two sureties, and where a certificate of solvency has been issued by the Superintendent of Insurance under the provisions of section one hundred and eighty-one of the Insurance Law and has not been revoked, no justification or notice thereof is necessary, and in such case a copy of the undertaking and notice of the application for an order to discharge the lien must be served upon the lienor, or his attorney, not less than two days before the application for such order is made.

If the lienor cannot be found, or does not appear by attorney, such service may be made by leaving a copy of said undertaking and notice at the lienor's place of residence, or if a corporation at its principal place of business within the State as stated in the notice of lien, with a person of suitable age and discretion therein, or if the house of his abode or its place of business is not stated in said notice of lien and is not known, then in such manner as the court may direct. The premises, if any, described in the notice of lien as the lienor's residence or place of business shall be deemed to be his said residence or its place of business for the purposes of said service at the time thereof, unless it is shown affirmatively that the person serving the papers or directing the service had knowledge to the contrary.

Whether the application for the order discharging the lien upon the approval of the undertaking is an *ex parte* application or a motion on notice, has not yet been uniformly decided. In some localities it is treated as an *ex parte* application, while in others it is being treated as a motion. It would seem to be more in keeping with the intent of the statute to treat it as an *ex parte* matter.

If bond with personal sureties is filed, five days' notice of justification must be given — see p. 1027.

Order Discharging

FORM No. 508

Order Discharging Lien Against Public Improvement Upon Giving
Surety Company Bond

At a Special Term, (*Part II*,) of the Supreme Court, held
in and for the County of (*New York*,) in the County
Court House in (*the Borough of Manhattan, City of*
New York,) on the (*12th*) day of (*July*, 1915.)

PRESENT:

Hon. (*EDWARD J. GAVEGAN*,)

Justice.

In the Matter of the Application
of
(*THE RIVER ENGINEERING COM-
PANY*) to have the lien filed by
(*JOSEPH JONES* against the monies
appropriated by the City of New York
for the construction of part of the
Queens Conduit in the Borough of
Brooklyn,) discharged.

(*JOSEPH JONES*,) having on the (*10th*) day of (*June*, 1915,) filed in the office of the (*Comptroller*) of the (*City of New York*) a notice of claim to a lien for (\$6,578.89) with interest against the moneys due or to become due from the (*City of New York*) to the (*River Engineering Company*,) under a contract for the construction of (*part of the Queens Conduit in the Borough of Brooklyn, City of New York*,) and this court by an order made and entered on (*June 23*, 1915,) having fixed the amount of the undertaking to be given to discharge the said lien at the sum of (\$7,500;) and the (*River Engineering Company*,) having executed an undertaking in that amount to the (*City of New York*,) conditioned for the payment of any judgment which may be recovered in an action to enforce the lien, with the (*World Indemnity Company*,) a surety company authorized by the laws of this State to transact business as surety; and

Order Discharging

a copy of the undertaking with notice that the same would be submitted to this court for approval, together with notice that an application would be made to this court at Special Term, (*Part II*) thereof, on the (12th) day of (*July*, 1915,) for an order discharging the above described lien, having been personally served upon the said lienor not less than (*two*) days before such time, and no one having appeared in opposition to such application, and the undertaking having been approved by a Justice of the Court and such approval having been indorsed upon the same,

NOW, on motion of (*Halsey I. Smith*,) attorney for the (*River Engineering Company*,) the contractor, it is

ORDERED, that upon filing such undertaking in the office of the (*Comptroller*) of the (*City of New York*,) the said lien of (*Joseph Jones*) acquired by the filing of the notice of claim aforesaid be and the same hereby is discharged; and it is further

ORDERED, that upon the presentation of a certified copy of this order to the said (*Comptroller*) of the (*City of New York*,) he shall mark the said lien discharged on the docket, together with a reference to this order.

Enter,

(*E. J. G.*)

J. S. C.

FORM No. 509

Order Fixing Amount of Undertaking to Discharge Lien Against
Real Property

At a Special Term, (*Part II*), of the Supreme Court,
held in and for the County of (*New York*), at the
County Court House in (*the Borough of Manhattan,*
City of New York), on the (*12th*) day of (*April*,
1916.)

PRESENT:

Hon. (*BARTOW S. WEEKS*),

Justice.

In the Matter of the Application
of
(*WEST CONSTRUCTION COM-*
PANY, INC.), Owner and Contractor,
for an order discharging a certain
Mechanic's Lien, filed by (*FAY CON-*
TRACTING COMPANY), Lienor,
against Real Property.

On reading and filing the annexed petition of (*Marcus White*,
President) of the above-named applicant, (*West Construction*
Company, Inc.), owner and contractor,

NOW, on motion of (*Moore & Bascombe*), attorneys for the
said applicant, it is hereby

ORDERED, that the sum of (*six thousand five hundred*
(\$6,500)) dollars be, and the same hereby is, fixed as the amount
of the undertaking to be executed and given by such applicant
to discharge the lien filed herein by (*Fay Contracting Company*)
for the sum of (*five thousand seven hundred and eighty-nine and*
80/100 (\$5,789.80)) dollars, in the office of the Clerk of the
County of (*New York*), on the (*10th*) day of (*April*, 1916,)
against the (*West Construction Company, Inc.*) owner and con-
tractor, and against the real property situated in (*the Borough*
of Manhattan, City of New York, on the northeast corner of
West End Avenue and 84th Street; and known as No. 900 West
End Avenue;) and it is further

Petition for Order to Fix Bond — Real Property

ORDERED, that the surety or sureties on said undertaking justify in at least double the sum named therein, and that a copy of said undertaking, with notice that the surety or sureties will justify before the Court or a Judge or Justice thereof, at a time and place therein mentioned, be served on said lienor or its attorneys not less than five days before such time as required by the statutes in such case made and provided.

Enter,

(B. S. W.,)

J. S. C.

FORM No. 510

**Petition for Order Fixing Amount of Undertaking to Discharge Lien
Against Real Property**

SUPREME COURT — (*New York*) County.

In the Matter of the Application
of
(*WEST CONSTRUCTION COM-
PANY, Inc.*,) Owner and Contractor,
for an order discharging a certain
Mechanic's Lien, filed by (*FAY CON-
TRACTING COMPANY*,) Lienor,
against Real Property.

The petition of the (*West Construction Company, Inc.*,) a corporation duly organized and existing under and by virtue of the laws of the State of New York, which is the applicant herein, respectfully shows:

That the (*West Construction Company, Inc.*,) is the owner in fee simple of premises located (*on the northeast corner of 84th Street and West End Avenue, Borough of Manhattan, City of New York, said property being 100 feet on West End Avenue by 130 feet on West 84th Street, known as No. 900 West End Avenue.*)

Petition for Order to Fix Bond — Real Property

That on or about the (10th) day of (April, 1916,) the (*Fay Contracting Company*,) a corporation organized and existing under and by virtue of the laws of the State of New York, filed in the office of the Clerk of the County of (*New York*,) a certain paper purporting to be a notice of mechanic's lien against the above-described premises for the sum of (\$5,789.80,) which said notice of lien mentioned and described the applicant as the owner and contractor.

That the said (*Fay Contracting Company*) claimed that it was engaged by the said (*West Construction Company, Inc.*,) as owner and contractor, to supply certain brick work in and about said premises.

That applicant herein desires to execute an undertaking with sufficient sureties, for such sum as the Court may direct, not less than the amount claimed in said notice of lien, conditioned for the payment of any judgment which may be rendered against the property for the enforcement of the lien, pursuant to the provisions of the Lien Law.

That no previous application has been made for the order prayed for herein.

WHEREFORE, said applicant asks that an order be made by the Court directing the said applicant to execute such undertaking in such sum as the Court may direct, and that the said lien may be discharged of record.

(*WEST CONSTRUCTION COM-
PANY, Inc.*,)

By (*Marcus White*,)
(*President.*)

(Verification)

Notice of Justification of Sureties

FORM No. 511

Discharge of Lien—Against Real Property—Notice of Justification of Personal Sureties and of Application for Order to Discharge LienSUPREME COURT — (*New York*) County.

In the Matter of the Application of
(*JAMES WILSON*)
To have the Lien filed by (*WALTER JONES*,) Upon Real Property of
(*JAMES WILSON*,) Owner, Discharged.

Sir:

PLEASE TAKE NOTICE, that an undertaking, of which the annexed is a copy, executed by (*John Doe and Richard Roe*,) as sureties, pursuant to an order made and entered herein on the (23d) day of (*June*, 1916,) by Mr. Justice (*Clarence J. Shearn*,) fixing (*seven thousand five hundred (\$7,500)*) dollars as the amount of the bond to be given by (*James Wilson*) to discharge the lien herein filed in the office of the Clerk of the County of (*New York*,) on the (10th) day of (*June*, 1915,) against the real estate of said (*James Wilson*,) situate at (*100 West 42d Street, Borough of Manhattan, City of New York*,) will be presented before the Justice of this Court sitting at Special Term, (*Part II*) thereof, at the County Court House, (*Borough of Manhattan, City of New York*,) on the (2d) day of (*July*, 1916,) at (10:30) A. M. of that day, and the sureties upon said undertaking will then and there justify.

Dated, (*New York, June 25, 1916.*)

(THEODORE ROSE,)

Attorney for (*James Wilson*.)

To

(WALTER JONES,) Esq.,
Lienor.

Five days' notice of this justification must be given to the lienor, or his attorney. If the lienor cannot be found, or does not appear by attorney, such service may be made by leaving a copy of said undertaking and

Order Discharging — Against Real Property

notice at the lienor's place of residence, or if a corporation at its principal place of business within the state as stated in the notice of lien, with a person of suitable age and discretion therein, or if the house of his abode or its place of business is not stated in said notice of lien and is not known, then in such manner as the court may direct. The premises, if any, described in the notice of lien as the lienor's residence or place of business shall be deemed to be his said residence or its place of business for the purposes of said service at the time thereof, unless it is shown affirmatively that the person serving the papers or directing the service had knowledge to the contrary.

FORM No. 512

Order Discharging Lien Against Real Property

At a Special Term of the Supreme Court, (*Part II*) thereof, held in and for the County of (*New York*), at the County Court House (*in the Borough of Manhattan, City of New York*), on the (*13th*) day of (*July*, 1916.)

PRESENT:

Hon. (*BARTOW S. WEEKS*),
Justice.

In the Matter of the Application
of
(*WEST CONSTRUCTION COMPANY, INC.*), Owner and Contractor,
for an order discharging a certain
Mechanic's Lien against Real Prop-
erty, filed by (*FAY CONTRACTING*
COMPANY), Lienor.

The (*Fay Contracting Company*) having on the (*10th*) day of (*April*, 1916,) filed a notice of claim to a lien for (\$6,578.89) with interest against the (*West Construction Company*) as owner and contractor and against the premises situated at (*the north-east corner of 84th street and West End avenue in the Borough of Manhattan, City of New York, being 100 feet on West End avenue and 130 feet on West 84th street and known as 900 West End avenue*), and indexed in the Lien Book in the office of the Clerk of the County of (*New York*);

Order Discharging

And this court by an order made and entered on (*June 23, 1916*), having fixed the amount of the undertaking directed to be given to discharge the said lien at the sum of (\$7,500) and the said (*West Construction Company*) having executed an undertaking in that amount with two sureties to the (*Fay Contracting Company*) conditioned for the payment of any judgment against said property which may be recovered in an action for the enforcement of the lien, and a copy of said undertaking with notice that the same would be submitted to this court at a Special Term, (*Part II*) thereof, on the (*12th*) day of (*July, 1916,*) for approval, and that the sureties therein named would then and there justify, having been personally served upon the said lienors not less than five days before such time, and no one appearing in opposition to such application, and the undertaking having been approved by a justice of the court,

NOW, on motion of (*Moore & Bascombe,*) attorneys for said (*West Construction Company,*) it is

ORDERED, that upon filing such undertaking in the office of the Clerk of the County of (*New York,*) the lien acquired by the filing of said notice of claim to a lien in the office of the Clerk of the County of (*New York*) on the (*10th*) day of (*April, 1916,*) at (*9:45 A. M.,*) against (*West Construction Company,*) as Owner and Contractor, by the said (*Fay Contracting Company,*) in the sum of (\$6,578.89), is discharged, and that the Clerk of the County of (*New York,*) be and he hereby is directed to cancel and discharge the same of record and to enter upon the lien docket and upon all indices an appropriate entry thereof with reference to this order and the date of entry thereof.

Enter,

(*B. S. W.*)

J. S. C.

PART VI

COMMON FORMS OF INSTRUMENTS

ACKNOWLEDGMENTS

In most of the States the seal of the official taking the acknowledgment is not required to be affixed to the instrument. When acknowledgments are taken outside of New York State for use in this State, a County Clerk's certificate of the authority of the notary should be attached.

FORM No. 513

By Individual

STATE OF NEW YORK, }
County of (*New York*), }^{ss.}

On this (*second*) day of (*January*, 1916), before me came (*John Jones*), to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

(*JOHN DOE*,)
Notary Public,
(*New York*) County, No. (2).

FORM No. 514

By Individual Not Known to Officer

STATE OF NEW YORK, }
County of (*New York*), }^{ss.:}

On this (*second*) day of (*January*, 1916,) before me came the above-named (*John Jones*), proven to me satisfactorily to be the

By Several Individuals

individual described in, and who executed the foregoing instrument, by the oath of (*Richard Roe*), to me personally known, who being by me duly sworn did depose and say, that he resided in the City (*and County of New York*); that he was acquainted with the said (*John Jones*), and that he knew him to be the same person described in, and who executed the foregoing instrument, and thereupon the said (*John Jones*) acknowledged that he executed the same.

(*JOHN DOE*),

Notary Public,

(*New York*) County, No. (2).

FORM No. 515**By Two Individuals**

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*second*) day of (*January*, 1916,) before me came (*John Jones*) and (*Richard Roe*), to me known to be the individuals described in and who executed the foregoing instrument, and they acknowledged that they executed the same.

(*JOHN DOE*),

Notary Public,

(*New York*) County, No. (2).

FORM No. 516**By One of Several Individuals**

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*second*) day of (*January*, 1916,) before me came (*John Jones*), to me known to be one of the individuals described in and who executed the foregoing instrument, and acknowledged that he executed the same.

(*JOHN DOE*),

Notary Public,

(*New York*) County, No. (2).

By Attorney in Fact

FORM No. 517**By Two Individuals, One Known and One Not Known to the Officer**STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*second*) day of (*January*, 1916,) before me came (*John Jones*), to me known to be one of the individuals described in and who executed the foregoing instrument, and also before me came (*Richard Roe*), satisfactorily proven to me to be the other individual described in and who executed the same, by the oath of (*William Rich*), to me personally known, who being by me duly sworn said that he resided in (*the City and County of New York*), and that he knew the said (*Richard Roe*) to be one of the individuals described in and who executed the said instrument. Thereupon the said (*John Jones*) and (*Richard Roe*) severally acknowledged that they executed the same.

(JOHN DOE,)

Notary Public,

(*New York*) County, No. (2).

FORM No. 518**Of Deed — By Attorney in Fact**STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*second*) day of (*January*, 1916,) before me came (*John Jones*), to me known to be the individual described in and appointed attorney in fact by a certain power of attorney executed by (*Richard Roe*) bearing date the (2*d*) day of (*January*, 1916,) and recorded in the office of (*the Register*) [*or Clerk*] of the County of (*New York*) on the (2*d*) day of (*January*, 1916,) and acknowledged that he executed the foregoing instrument as the act of said (*Richard Roe*.)

(JOHN DOE,)

Notary Public,

(*New York*) County, No. (2.)

By Subscribing Witness

FORM No. 519**By Subscribing Witness**

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this (*second*) day of (*January*, 1916,) before me came (*John Jones*), the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say, that he resided, at the time of the execution of said instrument, and still resides in (*the Borough of Manhattan, New York City*;) that he is and then was acquainted with (*Richard Roe*) and knew (*him*) to be the individual described in, and who executed the foregoing instrument; and that he, said subscribing witness, was present and saw him execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

(*JOHN DOE*,)

Notary Public,

(*New York*) County, No. (2.)

FORM No. 520**By a Corporation**

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this (*second*) day of (*January*,) in the year (1916,) before me came (*John Jones*,) to me known, who, being by me duly sworn, did depose and say that he resides in (*the Borough of Manhattan, City of New York*;) that he is the (*president*) of the (*John Jones Manufacturing Company*,) the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(*JOHN DOE*,)

Notary Public,

(*New York*) County, No. (2.)

By Husband and Wife

FORM No. 521

By a Corporation — Another Form

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

On this (22d) day of (*December*, 1916,) before me personally appeared (*Frank C. Willis*,) with whom I am personally acquainted, who, being by me duly sworn, said: That he resides in the (*Borough of Chatham, N. J.*;) that he is (*Resident Vice-President*) of the (*Square Indemnity Company*,) the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of the said company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said company; and that he signed his name thereto as (*Resident Vice-President*) by like authority; and the said (*Frank C. Willis*) further says that he is acquainted with (*William R. King*) and knows him to be the (*Resident Assistant Secretary*) of said company; that the signature of the said (*William R. King*) subscribed to said instrument, is in the genuine handwriting of said (*William R. King*) and was thereto subscribed by like order of said board of directors and in the presence of him, the said (*Frank C. Willis*.)

[SEAL] (*MARTIN R. POWERS*,)
 Notary Public,
 (*New York*) County.

FORM No. 522

By Husband and Wife Known to the Officer

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

On this (11th) day of (*July*, 1916,) before me came (*George Boyd*) and (*Jane Boyd*,) his wife, severally known to me to be the persons described in, and who executed the foregoing instrument, and acknowledged that they executed the same.

(*FRANK JOHNSON*,)
 Notary Public,
 (*New York*) County (*No. 276*.)

Firm by One Partner

FORM No. 523**By Firm by One Partner**

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*11th*) day of (*July*, 1916,) before me came (*Harry Smith*,) to me known to be a member of the firm of (*Smith, Parson & Company*) and the person described in and who executed the foregoing instrument in the firm name of (*Smith, Parson & Company*,) and acknowledged that he executed the same as the act and deed of said firm of (*Smith, Parson & Company*.)

(*FRANK JOHNSON*.)

Notary Public,
(*New York*) County (*No. 276*.)

FORM No. 524**By a Trustee**

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*11th*) day of (*July*, 1916,) before me came (*Edward Cole*,) to me known to be the trustee of the trusts created by the last will and testament of (*James Daly, deceased*,) of (*the Town of Knox, Suffolk County, New York*,) and the person described in and who executed the foregoing instrument and acknowledged that he executed the same as such trustee.

(*FRANK JOHNSON*.)

Notary Public,
(*New York*) County (*No. 276*.)

By Executor

FORM No. 525**By an Executor**

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this (*11th*) day of (*July*, 1916,) before me came (*Edward Cole*,) to me known to be the executor of the last will and testament of (*James Daly*,) late of the (*City and County of New York*) and the person described in and who executed the foregoing instrument and acknowledged that he executed the same as such executor.

(*FRANK JOHNSON*,)
Notary Public,
(*New York*) County (*No. 276.*)

FORM No. 526**By an Administrator**

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this (*11th*) day of (*July*, 1916,) before me came (*Edward Cole*,) to me known to be the administrator of the goods, chattels, and credits of (*James Barnes*,) late of (*the City of Albany*,) deceased, and the person described in and who executed the foregoing instrument and acknowledged that he executed the same as such administrator.

(*FRANK JOHNSON*,)
Notary Public,
(*New York*) County (*No. 276.*)

Husband and Wife — New Jersey

FORM No. 527

Husband and Wife — New Jersey

STATE OF NEW JERSEY, }
County of (*Essex*), } ss.:

BE IT REMEMBERED, that on this (*twenty-seventh*) day of (*September*), in the year of our Lord, one thousand nine hundred and (*sixteen*) before me, (*here insert name and title of officer*) personally appeared (*Andrew Austin*), and (*Mary Austin*), his wife, who, I am satisfied (*are*) the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and they thereupon (*severally duly*) acknowledged that (*they*) signed, sealed and delivered the same as (*their*) voluntary act and deed, for the uses and purposes therein expressed.

And the said (*Mary Austin, wife of the said Andrew Austin*), being by me privately examined, separate and apart from (*her*) husband, acknowledged that (*she*) signed, sealed and delivered the same as (*her*) voluntary act and deed, FREELY, without any fear, threats or compulsion of (*her*) said husband, (*Andrew Austin*).

[SEAL]

(JOHN KANE,)

Commissioner for the State of New Jersey.

FORM No. 528

Before Consular Officer

UNITED STATES CONSULATE }
GENERAL, } ss.:
(*City of Paris, Republic of France*), }

I (*John Brown*), (*Deputy*) Consul-(*General*) of the United States of America (*at Paris, Republic of France*), duly commissioned, and qualified, do certify that on this (*16th*) day of (*April*, *1916*), before me personally appeared in said (*Paris, France*, *William Smith*), to me known, and known to me to be the individual described in, whose name is subscribed to, and who executed the foregoing instrument, and being by me informed of

 Before Foreign Commissioner

the contents of said instrument (*he*) duly acknowledged to me that (*he*) executed the same freely, and voluntarily for the uses, and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and Official Seal the day, and year last above written.

(*JOHN BROWN,*)

(*Deputy*) Consul (*General*) of the United States of America at (*Paris, France.*)

 FORM No. 529

Before Foreign Commissioner

(*REPUBLIC OF FRANCE,*) } ss.:
 (*City of Paris,*)

BE IT REMEMBERED, that on this (10th) day of (*September, 1916,*) at the (*City of Paris*) aforesaid before me (*Henry Smith,*) Commissioner for the State of (*New York,*) residing in said (*City*) personally came (*George Brown,*) to me known to be the individual described in and, who executed the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my Official Seal the day, and year last above written.

(*HENRY SMITH,*)

Commissioner for the State of New York.

 FORM No. 530

Affidavit of Title

STATE OF NEW YORK, }
 (*City and*) County of (*New York,*) } ss.:

(*OLIVER WENDELL,*) being duly sworn, says, that he resides at (*No. 50 Morningside Avenue in the Borough of Manhattan, City of New York,*) and is by occupation (*a physician;*) that he is a citizen of the United States, twenty-one years of age and upwards; and that he is now in possession, and the owner

Form

in fee simple, of the premises known as (*No. 524 West 72d Street in the Borough of Manhattan,*) in (*said city,*) this day to be (*conveyed*) by him to (*Charles Dudley.*)

Deponent further says that the said premises have been held by him for upwards of (*ten*) years last past, and that his possession thereof has been peaceable and undisturbed, and that the title thereto has never been disputed, questioned or rejected, to his knowledge, nor does deponent know of any facts by reason of which said possession or title might be disturbed, or questioned, or by reason of which any claim to said premises, or any part thereof, or any interest therein adverse to him, might arise, or be set up adverse to this deponent; and that he is informed and believes that his grantors held the said premises for more than twenty years prior to the transfer to him; and that no person has any contract for the purchase of, or claim to or against said premises, except as hereinafter stated; and that the same are now free and clear of all taxes, incumbrances or liens by mortgage, decree, judgment or by statute, or by virtue of any proceedings by or against him in any court or before any officer of any State or of the United States, or filed in the office of the clerk of any county or court in this State, or in any State or the United States and of all other liens of every nature and description, save and except (*a mortgage given to secure the sum of ten thousand dollars to Richard Harding, which mortgage is recorded in the office of the Register of the County of New York on the 2d day of July, 1914, in Liber 52 of Mortgages, Section 12 at page 332, and indexed under block No. 3256 on the land map of the City of New York,*) or have any proceedings in bankruptcy ever been instituted by or against the deponent in any court or before any officer of any State, or of the United States, or has deponent at any time made an assignment for the benefit of creditors.

* Deponent further says that he is married to (*Isabel Morison, who is the only person to whom he has ever been married, who is over the age of twenty-one years and competent to convey or mortgage real estate,*) and who is the same person who executed, with deponent, the deed to the said premises; and that there are no judgments, or decrees, or attachments, or orders of any court or officer for the payment of money against him, or to which

* In case deponent is a single man, a widower, or if he has been divorced for his fault or not, such facts should be substituted.

Form

he is a party, unsatisfied or not canceled of record in any of the courts, or before any officer of the United States, or this State, or any suit or proceedings pending anywhere affecting said premises, to his knowledge, information or belief, and that any judgments found of record against any person under the name (*Oliver Wendell*) are not against deponent.

Deponent makes this affidavit to induce (*Charles Dudley*,) above named, to accept a (*deed to the*) said premises, and pay the consideration therefor, knowing that the said (*Charles Dudley*) relies upon the truth of the statements herein contained.

(*OLIVER WENDELL*.)

Sworn to before me, this }
(*19th*) day of (*March*, 1916.) }

(*GEORGE GORDON*,)

Notary Public,

(*New York*) County.

AGREEMENTS

In signing contracts or other instruments, the name of the principal should always appear first, and then the word "by" before the name of the agent, and then "as his agent," e. g.:

John Jones,

By *William Smith*, as his agent.

In the case of a negotiable instrument or a sealed document, it is vital who has signed, and the exact form of the signature, since in these cases as a rule only the person appearing or signing the document as a party can sue or be sued thereon. (118 *App. Div.* 208, *aff'd* 192 *N. Y.* 221, 64 *N. Y.* 357, 203 *N. Y.* 265.)

If it is not a sealed document or negotiable instrument, this is not so important, since a party who is not named may sue or be sued thereon as an undisclosed principal. If the agent has signed as a party he is liable, and no evidence can be offered to show that the agent was acting as such, although evidence can be offered for the purpose of permitting the principal to sue, or a third party to sue the principal. (211 *N. Y.* 68.)

FORM No. 531

Corporation "In Testimonium" Clause

IN WITNESS WHEREOF, the (*American Boat*) Company, the party of the first part, has caused its corporate seal to be hereto affixed and these presents to be signed by its (*president*) and (*secretary*), and the (*H. J. Hart*) Company, the party of the second part, has caused its corporate seal to be hereto affixed and these presents to be signed by its (*vice-president*) and (*secretary*) on the day and year first above written.

(*AMERICAN BOAT COMPANY*),

By

(*JAMES WILSON*),

(*President*.)

Retainer on Contingent Basis

Signed, Sealed, and Delivered
in the presence of
(*FREDERICK STONE.*)

Attest:
(*WILSON BROWN,*)

Secretary.

(*H. J. HART COMPANY,*)

By

(*EMILE BOOS,*)

(*Vice-President,*)

Signed, Sealed, and Delivered
in the presence of

Attest:
(*GEORGE ATWOOD,*)

Secretary.

FORM No. 532**Short Form**

IN WITNESS WHEREOF, the party of the (*first*) part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officers the day and year first above written.

FORM No. 533**Retainer on Contingent Basis**

(*New York, May 21, 1916.*)

Mr. (*James J. Maxwell,*
32 *Liberty Street,*
New York City.)

Dear Sir:

I hereby retain you as my attorney to prosecute a claim which I have against (*the Public Utilities Corporation of New York for damages for injuries sustained by me on the 28th day of March, 1915, at 42d Street and Broadway, in the City of New York, through the negligence of said corporation, its agents, servants and*

Of Service and Hiring

employees,) and to represent me in any action brought for that purpose; and I agree to pay you (*twenty-five*) per cent. (25%) of any recovery obtained either as the result of an action, through compromise or otherwise.

I agree also not to compromise said claim nor to accept any sum in settlement thereof without first notifying you of any settlement agreed upon and the time when and place where same is to be completed.

Yours truly,
(FRANK BURDEN.)

The client, for reasons of his own, may discharge an attorney arbitrarily and with liability only for the legal service theretofore rendered. (*Martin v. Camp*, 221 N. Y. —.) An agreement not to compromise without consent of attorney is void as against public policy. (160 App. Div. 421, 214 N. Y. 255.)

FORM No. 534

Agreement of Service and Hiring*

Agreement made this (*second*) day of (*January*.) one thousand nine hundred and sixteen, between (*The China Company, a corporation organized under the laws of the State of New Jersey, and having its principal office at 95 Pearl Street, in the Borough of Manhattan, City of New York,*) hereinafter called (*the Company*.) and (*Frank Peters*) of (*Orange, New Jersey*.) hereinafter styled (*the salesman*;) witnesseth:

1. The said (*salesman*) has agreed and hereby does agree to enter into the service of (*the Company*) as a (*traveling salesman*) for a period of (*two years*) beginning on the (*first*) day of (*February*, 1916.)

2. The said (*salesman*) agrees to devote the whole of his time, attention and energies to the performance of his duties as such (*salesman*.) subject to the general control of (*the Company*.) and to serve (*the Company*) diligently and according to the best of his ability in all respects, and further agrees not to represent or to be

* As to measure of damages on breach by employer, see *Denniston v. Finnegan*, 160 N. Y. Supp. 5.

Party Wall

in any way connected either directly or indirectly with any other business during said period. And said (*salesman*) further agrees (*to keep proper books of account, and to make complete and correct entries of the price and amount of all goods sold by him, and from time to time as directed by the Company to submit at its New York office such accounts and reports of all sales, transactions and dealings had, of, in and in relation to the business of the Company.*)

3. (*The Company*) agrees to pay the said (*salesman*) a salary of (*sixty*) (60) dollars per (*week*) payable (*weekly*) from the commencement of the said service (*and a commission of two and one-half per centum (2½%) upon all sales made by said salesman for the Company or secured by the Company through his efforts during the said period over and above the sum of seventy-five thousand (\$75,000) dollars per annum. Said commissions to be adjusted semi-annually on the last days of January and June of each year and to be payable within ten days thereafter and to be based only upon sales actually completed and paid for on the date of each adjustment.*)

4. (*The Company*) agrees to pay to said (*salesman*) weekly in addition to his salary, all reasonable traveling expenses and hotel bills incurred by him in connection with the business of (*the Company*.)

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

(*THE CHINA COMPANY,*)

By

(SEAL.)

(*JAMES L. FOSTER,*) Pres.

(*FRANK PETERS.*) (SEAL.)

(Acknowledgments)

FORM No. 535

Party-Wall Agreement

WHEREAS, (*Charles Brown*) and (*Thomas Simpson, both*) of (*the Borough of Manhattan, in the City of New York,*) are the owners respectively of two adjoining parcels of land situate (*on the east side of West End Avenue, in the Borough of Manhattan, City of New York,*) the line dividing said parcels being (60 feet

Party Wall

north of and parallel to the center line of West 92d Street,) and running (at right angles to the street line of West End Avenue,) and the said (Charles Brown) being the owner of the parcel (south) of said line and said (Thomas Simpson,) the owner of the parcel (north) of said line; and

WHEREAS, the said parties are desirous of providing for the erection of a party wall on said line, now, therefore, this agreement, made the (first) day of (May, 1915,) by and between said (Charles Brown,) party of the first part, and said (Thomas Simpson,) party of the second part, witnesseth:

1. Whichever of the parties hereto shall first erect a building adjoining said line shall erect a wall thereon, of such length as such party shall see fit, which wall shall be constructed of good materials and workmanship, and shall conform to the requirements of the building laws (and regulations of the Building Department of the City of New York;) but no more than six inches in thickness of said wall with its proportion of necessary foundation shall be placed on the land of the other party without the consent of such party.

2. Said wall shall, when so built, be and remain a party wall.

3. Whenever the owner of the other parcel shall use said wall or any part thereof he shall pay to the person who shall at that time own the parcel first built upon, such proportion of the then value of the said wall, including necessary piling, foundation or other substructure and coping, as the portion of the said wall used by said party shall bear to the entire structure of such wall.

4. Either of the parties hereto may add to said party wall in length, thickness, height or depth and may repair, or in case of destruction, rebuild same and any addition thereto.

The party making repairs to or rebuilding said wall or any addition thereto shall make said repairs or reconstruct said wall in such a way as to leave the other party as nearly as may be in the same condition with respect to said wall as before, and shall use good materials and workmanship, and shall do all work connected with said repairs or rebuilding from his own side of the dividing line in case the other parcel is built upon, and shall conform same to the requirements of the building laws (and regulations of the Department of Buildings of the City of New York.) One-half of any repairs so made, shall be paid to the party making

Building — Owner With Contractor

the same by the owner of the other parcel, if said party wall or any part thereof has been used as hereinbefore provided by such owner, on demand; and one-half of the value of any such rebuilt wall or of any addition made as aforesaid shall be paid for by the owner of the other parcel when used, upon the same terms as hereinbefore provided for the original wall, any addition made to said wall in length shall be uniform in thickness with the original wall, but no addition to the thickness of said wall shall be made by either of the parties hereto upon the land of the other unless such land is vacant, and in no event so as to cause more than six inches of said wall, inclusive of said addition, with the proportion of necessary foundation to be upon the land of the other party without the consent of such party.

5. In consideration of the foregoing and of (*one dollar*,) lawful money of the United States to each of the parties hereto, by the other party in hand paid, the receipt of which is hereby acknowledged, the said parties, for themselves and their respective heirs and assigns do mutually covenant and agree each to and with the other, his heirs, representatives and assigns, to keep and in all respects observe the foregoing agreement, and that the covenants therein contained shall run with the land but that no owner is to be responsible except for his acts and defaults while owner.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

(*CHARLES BROWN*,) (SEAL.)
(*THOMAS SIMPSON*.) (SEAL.)

(Acknowledgment.)

FORM No. 536**Agreement for Construction of a Building**

THIS AGREEMENT, made the (*11th*) day of (*August*) in the year (*one thousand nine hundred and ten*), by and between (*Joseph Troman*,) party of the first part, hereinafter designated the (*contractor*,) and (*Messrs. Schloss & Metzger*,) parties of the second part, (*hereinafter designated the owners*,)

WITNESSETH, that the (*contractor*,) in consideration of the agreements herein made by the (*owners*,) agrees with the said (*owners*) as follows:

Building — Owner With Contractor

Article I. The (*contractor*) shall and will provide all the materials and perform all the work for the erection and completion of (*factory*) at (*Bronxwood Avenue and 229th Street, New York City.*) employing none other than Union labor, as shown on the drawings and described in the specifications prepared by (*Harry Allan Jacobs, No. 320 Fifth Avenue, New York,*) architect, which drawings and specifications are identified by the signatures of the parties hereto, and become hereby a part of this contract.

Article II. It is understood and agreed by and between the parties hereto that the work included in this contract is to be done under the direction of said architect, and that his decision as to the true construction and meaning of the drawings and specifications shall be final. It is also understood and agreed by and between the parties hereto that such additional drawings and explanations as may be necessary to detail and illustrate the work to be done are to be furnished by said architect, and they agree to conform to and abide by the same so far as they may be consistent with the purpose and intent of the original drawings and specifications referred to in Article I.

It is further understood and agreed by the parties hereto that any and all drawings and specifications prepared for the purpose of this contract by the said architect are and remain his property, and that all charges for the use of the same, and for services of said architect, are to be paid by the said (*owners.*)

Article III. No alterations shall be made in the work except upon written order of the architect; the amount to be paid by the (*owners*) or allowed by the (*contractor*) by virtue of such alterations to be stated in said order. Should the (*owners*) and (*contractor*) not agree as to amount to be paid or allowed, the work shall go on under the order required above, and in case of failure to agree, the determination of said amount shall be referred to arbitration, as provided for in Article XII of this contract.

Article IV. The (*contractor*) shall provide sufficient, safe and proper facilities at all times for the inspection of the work by the architect or his authorized representatives; shall, within (*twenty-four hours*) after receiving written notice from the architect to that effect, proceed to remove from the grounds or buildings all materials condemned by him, whether worked or unworked, and to

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take down all portions of the work which the architect shall by like written notice condemn as unsound or improper, or as in any way failing to conform to the drawings and specifications, and shall make good all work damaged or destroyed thereby.

Article V. Should the (*contractor*) at any time refuse or neglect to supply a sufficiency of properly skilled workmen, or of materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the architect, the (*owners*) shall be at liberty, after three days' written notice to the (*contractor*), to provide any such labor or materials, and to deduct the cost thereof from any money then due or hereafter to become due to the (*contractor*) under this contract; and if the architect shall certify that such refusal, neglect or failure is sufficient grounds for such action, the (*owners*) shall also be at liberty to terminate the employment of the (*contractor*) for the said work and to enter upon the premises and take possession, for the purpose of completing the work included under this contract, of all materials, tools and appliances thereon, and to employ any other person or persons to finish the work, and to provide the materials therefor; and in case of such discontinuance of the employment of the (*contractor*) he shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the (*owners*) in finishing the work, such excess shall be paid by the (*owners*) to the (*contractor*), but if such expenses shall exceed such unpaid balance, the (*contractor*) shall pay the difference to the (*owners*.) The expense incurred by the (*owners*), as herein provided, either for furnishing materials or for finishing the work, and any damage incurred through such default, shall be audited and certified by the architect, whose certificate thereof shall be conclusive upon the parties.

Article VI. The (*contractor*) shall complete the several portions, and the whole of the work comprehended in this agreement by and at the time or times hereinafter stated, to wit:

First floor concrete in position and dry, ready to receive machinery, foundation, first floor walls, erected, with windows,

Building — Owner With Contractor

sash and doors in place, and second floor floor timbers, erected on (*September* 8, 1910,) and all work completed and accepted on (*September* 29, 1910.) IT IS FURTHER UNDERSTOOD AND AGREED, that time is of the essence of this contract, and that in the event that all of the said work agreed to be done by the contractor and all of the material agreed to be furnished by him shall not have been done, performed and furnished and the building agreed to be erected shall not in all respects have been completed on the (*29th*) day of (*September,*) that then and in that case the (*contractor*) shall pay to the (*owners fifty*) (\$50.00) dollars per day for each and every day required to complete the building after the said (*29th*) day of (*September,*) and the (*owners*) agree to pay to the (*contractor fifty*) (\$50.00) dollars per day for each and every day in which the said building shall have been completed prior to the said (*29th*) day of (*September.*)

Article VII. Should the (*contractor*) be delayed in the prosecution or completion of the work by the act, neglect or default of the (*owners,*) of the architect, or of any other contractor employed by the (*owners*) upon the work, or by any damage caused by fire or other casualty for which the (*contractor*) is not responsible, or by combined action of workmen in nowise caused by or resulting from default or collusion on the part of the (*contractor,*) then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all the causes aforesaid, which extended period shall be determined and fixed by the architect, but no such allowance shall be made unless a claim therefor is presented in writing to the architect within forty-eight hours of the occurrence of such delay.

Article VIII. The (*owners*) agree to provide all labor and materials essential to the conduct of this work not included in this contract in such manner as not to delay its progress, and in the event of failure so to do, thereby causing loss to the (*contractor*) agree that they will reimburse the (*contractor*) for such loss, and the (*contractor*) agrees that if he shall delay the progress of the work so as to cause loss for which the (*owners*) shall become liable, then he shall reimburse the (*owners*) for such loss. Should the (*owners*) and (*contractor*) fail to agree as to the amount of loss comprehended in this article, the determination of the amount shall be referred to arbitration as provided in Article XII of this contract.

Article IX. It is hereby mutually agreed between the parties

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hereto that the sum to be paid by the (*owners*) to the (*contractor*) for said work and materials shall be *seventeen thousand, seven hundred and seventy-five dollars* (\$17,775), subject to additions and deductions as hereinbefore provided, and that such sum shall be paid by the (*owners*) to the (*contractor*,) in current funds, and only upon certificates of the architect, as follows:

On or after the first of every month, the (*contractor*) shall file with the architect a requisition for the total amount of work and material permanently installed during the previous month. Upon receipt of this requisition, the architect shall issue a certificate upon the (*owners*) for eighty-five (85) per cent. of the amount of said requisition. Upon the difference between the sum total of said certificate and the amount of the contract, plus the amount of extra orders issued, the final payment shall be made.

The final payment shall be made within fifteen days after the completion of the work included in this contract, and all payments shall be due when certificates for the same are issued.

If at any time there shall be evidence of any lien or claim for which, if established, the (*owners*) of the said premises might become liable, and which is chargeable to the (*contractor*,) the (*owners*) shall have the right to retain out of any payment then due or thereafter to become due an amount sufficient to completely indemnify them against such lien or claim. Should there prove to be any such claim after all payments are made, the (*contractor*) shall refund to the (*owners*) all moneys that the latter may be compelled to pay in discharging any lien on said premises made obligatory in consequence of the (*contractor's*) default.

Article X. It is further mutually agreed between the parties hereto that no certificate given or payment made under this contract, except the final certificate or final payment, shall be conclusive evidence of the performance of this contract, either wholly or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials.

Article XI. The (*owners*) shall during the progress of the work maintain insurance on the same against loss or damage by fire, the policies to cover all work incorporated in the building, and all materials for the same in or about the premises, and to be made payable to the parties hereto, as their interest may appear.

Article XII. In case the (*owners*) and (*contractor*) fail to agree in relation to matters of payment, allowance or loss referred to in

Building — Contractor With Subcontractor

Articles III or VIII of this contract, or should either of them dissent from the decision of the architect referred to in Article VII of this contract, which dissent shall have been filed in writing with the architect within ten days of the announcement of such decision, then the matter shall be referred to a board of arbitration to consist of one person selected by the (*owners*,) and one person selected by the (*contractor*,) these two to select a third. The decision of any two of this board shall be final and binding on both parties hereto. Each party hereto shall pay one-half of the expense of such reference.

Article XIII. It is understood that the (*owners*) assume no responsibility for the plan, manner or details of performing or carrying on the work herein provided for, but are to be kept and saved harmless by the (*contractor*) from all actions that may be instituted against the (*owners*,) either alone or jointly with any other person, to recover for damages to person or property which may be sustained by the (*contractor*) or by any of his employees or by any other person by reason of any act done or omitted during the progress of the said work or in consequence thereof.

The said parties for themselves, their heirs, successors, executors, administrators and assigns, do hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

(WILLIAM TAYLOR,)
 (ANDREW CLEEFF, Jr.,)
 (HUGO N. SCHLOSS,)
 (EUGENE METZGER,)
 (JOSEPH TROMAN.)

FORM No. 537

Agreement for Construction Work Contractor With Subcontractor

THIS AGREEMENT, made the (10th) day of (*May*,) in the year nineteen hundred and (*fifteen*) by and between (*John Hurley, carpenter*,) of (*156 5th Avenue, New York City*,) party of the first part (*hereinafter designated as the sub-contractor*,) and

Building — Contractor With Subcontractor

(*John Tucker*) of (156 5th avenue, New York City, general contractor,) party of the second part, (*hereinafter designated the general contractor.*)

WITNESSETH, that the sub-contractor, in consideration of the fulfillment of the agreement herein made by the general contractor, agrees with the said general contractor as follows:

Article I. The sub-contractor under the direction and satisfaction of (*Hill & Dale,*) architects, (1123 Broadway, New York City,) acting for the purposes of this contract as agents of the owner, shall and will provide all the materials and perform all the (*carpenter work of the new stable building about to be erected at Nos. 166-172 Perry street, in the City of New York,*) all as mentioned in the specifications and shown on the drawings prepared by the said architects and which drawings and specifications are identified by the signatures of the parties hereto.

Article II. The architects are to furnish to the contractor such further drawings or explanations as may be necessary to detail and illustrate the work to be done, and the sub-contractor shall conform to the same as part of this contract so far as they may be consistent with the original drawings and specifications referred to and identified, as provided in Article I. The decision of the architects as to the true construction and meaning of the drawings and specifications shall be final and all drawings and specifications are and remain the property of the architects.

Article III. No alterations shall be made in the work shown or described by the drawings and specifications, except upon a written order of the architects, and when so made the value of the work added or omitted shall be computed by the sub-contractors and the amount so ascertained when certified by the architect shall be added to or deducted from the contract price. In the case of dissent from such adjustment by either party thereto, the valuation of the work added or omitted shall be referred to (*three*) (3) disinterested arbitrators, one to be appointed by each of the parties to this contract, and the third by the two thus chosen; the decision of any two of whom shall be final and binding and each of the parties hereto shall pay one-half of the expense of such reference.

Article IV. The sub-contractor shall provide sufficient, safe and proper facilities at all times for the inspection of the work by the architects and general contractor or their authorized representatives. He shall, within twenty-four hours after receiving writ-

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ten notice from the architects and general contractors to that effect, proceed to remove from the grounds, or buildings, all materials condemned by them, whether worked or unworked, and to take down all portions of the work which the architects or general contractors shall by like written notice condemn as unsound or improper, or as in any way failing to conform to the drawings and specifications, and shall make good all work damaged or destroyed thereby.

Article V. Should the sub-contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen, or of materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the architects, the general contractor shall be at liberty, after three days' written notice to the sub-contractor, to provide any such labor or materials, and to deduct the cost thereof from any money then due or thereafter to become due to the sub-contractor under this contract; and if the architects shall certify that such refusal, neglect or failure is sufficient ground for such action, the general contractor shall also be at liberty to terminate the employment of the sub-contractor for the said work and to enter upon the premises and take possession, for the purpose of completing the work comprehended under this contract, of all materials, tools and appliances thereon, and to employ any other person or persons to finish the work, and to provide the materials therefor, and in case of such discontinuance of the employment of the sub-contractor he shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the general contractor in finishing the work, such excess shall be paid by the general contractor to the sub-contractor, but if such expenses shall exceed such unpaid balance, the sub-contractor shall pay the difference to the general contractor. The expense incurred by the general contractor as herein provided, either for furnishing materials or for finishing the work, and any damage incurred through such default, shall be audited and certified by the general contractor, but an appeal from his decision may be made to arbitration, as provided in Article III of this contract.

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Article VI. The sub-contractor shall complete the several portions and the whole of the work comprehended in this agreement by and at the time or times hereinafter stated, to wit: (*the carpenter*) work to be done as rapidly as the progress of the other works of the building will permit and the whole (*carpenter*) work ready for (*painting and finishing*) is to be completed on or before the (15th) day of (*August, 1905.*)

Article VII. Should the sub-contractor be obstructed or delayed in the prosecution or completion of his work by the act, neglect, delay or default of the general contractor, or the architects, or of any other contractor employed by the general contractor upon the work, or by any damage which may happen by fire, lightning, or other casualty for which the sub-contractor is not responsible, or by the abandonment of the work by the employees through no default of the sub-contractor, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid, but no such allowance shall be made unless a claim therefor is presented in writing to the general contractor within forty-eight hours of the occurrence of such delay. The duration of such extension shall be certified to by the general contractor, but appeal from his decision may be made to arbitration as provided in Article III of this contract.

Article VIII. The sub-contractor shall have the right to lock out his employees upon an order so to do being received by him from the Building Trades Employers' Association of the City of New York, and in the event of such lockout taking place no claim for damages shall be made by the general contractors on account of any delay caused thereby, and the time fixed by this contract for the completion of the work shall be extended for a period equivalent to the time lost by reason of said lockout. The sub-contractor shall notify the general contractor in writing within *twenty-four* (24) hours of the cessation and resumption of work.

Article IX. The general contractor agrees to provide all labor and materials not included in this contract in such manner as not to delay the material progress of the work, and in the event of failure so to do, thereby causing loss to the sub-contractor, agrees that he will reimburse the sub-contractor for such loss, and the sub-contractor agrees that if he shall delay the material progress of the work so as to cause any damage for which the general con-

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tractor shall become liable (*as above stated,*) then he shall make good to the general contractor any such damage. The amount of such loss or damage to either party hereto shall, in every case, be fixed and determined by the general contractor but appeal from his decision may be made to arbitration as provided in Article III of this contract.

Article X. It is hereby mutually agreed between the parties hereto that the sum to be paid by the general contractor to the sub-contractor for said work and materials shall be (*six thousand five hundred dollars* (\$6,500.00), subject to additions and deductions as hereinbefore provided, and that such sum shall be paid in current funds by the general contractor to the sub-contractor in installments as follows: payments to be made monthly on the value of the work done as certified by the architects, retaining (*fifteen*) per centum until the completion and acceptance of the work.

The final payment shall be made within (*thirty*) days after this contract is fulfilled.

All payments shall be made upon written certificates of the architects to the effect that such payments have become due.

If at any time there shall be evidence of any lien or claim for which, if established, the general contractor or the said premises might become liable, and which is chargeable to the sub-contractor, the general contractor shall have the right to retain out of any payment then due or thereafter to become due an amount sufficient to completely indemnify him, against such lien or claim. Should there prove to be any such claim after all payments are made, the sub-contractor shall refund to the general contractor all moneys that the latter may be compelled to pay in discharging any lien on said premises made obligatory in consequence of the sub-contractor's default.

Article XI. It is further mutually agreed between the parties hereto that no certificate given or payment made under this contract, except the final certificate or final payment, shall be conclusive evidence of the performance of this contract, either wholly or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials.

Article XII. The general contractor shall during the progress of the work maintain full insurance on the said work, in his own name and in the name of the sub-contractor, against loss or damage by fire. The policies shall cover all work incorporated in the

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building, and all materials for the same in or about the premises and shall be made payable to the parties hereto, as their interest may appear.

Article XIII. The said parties for themselves, their heirs, executors, administrators and assigns, do hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

(JOHN HENLEY,) [L. s.]

Party of the first part.

(JOHN J. TUCKER,) [L. s.]

Party of the second part.

In presence of

(W. H. HOFFMAN,)

(Witness.)

FORM No. 538**Composition Agreement**

WHEREAS, (*John O. Wheeler,*) of (*the Borough of Manhattan, City of New York,*) hereinafter described as "the debtor," is justly indebted in divers sums of money to us, his several creditors, and is unable by reason of losses and business reverses to satisfy our debts and claims in full; and

WHEREAS, we, the said creditors, have agreed to accept (*forty (40) cents*) for every dollar owing by the said debtor to us, in full satisfaction and discharge of all debts owing by the said debtor to us and each of us, respectively,

NOW, THEREFORE, we, the several creditors of the said debtor, for ourselves, respectively and severally, and for our respective and several heirs, executors, administrators, successors and assigns, do covenant, compound, promise and agree to and with the said debtor and to and with each other, that we will accept and receive from the said debtor, for each and every dollar that the said debtor does owe to us and each of us, the sum of (*forty (40) cents,*) to be paid by the said debtor to us, his several and respective creditors, as follows: (*twenty-five (25) per cent.*) of the several amounts in which the said debtor is indebted to each of us

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is to be paid by the said debtor to each of us on or before the (*tenth*) day of (*January, nineteen hundred and fourteen*) in cash; (*ten* (10) *per cent.*) of the several amounts due to each of us from the said debtor is to be paid in promissory notes, dated (*the second day of January, nineteen hundred and fourteen*) and payable (*four months after date,*) with interest at (*six*) (6) per cent., to be made by the said debtor and delivered to each of us on or before the (*tenth*) day of (*January, nineteen hundred and fourteen*; (*five*) (5) per cent. of the several amounts due to each of us from the said debtor is to be paid in promissory notes, dated the (*second*) day of (*January, nineteen hundred and fourteen,*) and payable (*six months after date,*) with interest at (*six*) (6) per cent., to be made by said debtor and delivered to each of us on or before the (*tenth day of January, nineteen hundred and fourteen.*) *

And we, the said creditors, do further covenant and agree that neither we nor any one of us will at any time hereafter sue, arrest, molest or disturb the said debtor, or his goods or chattels, for any debt or liability now existing against the said debtor in favor of us or any one of us; provided, however, that in case default be made by the said debtor in the part payment in cash, or in the delivery of the said notes, on or before the (*tenth*) day of (*January, 1914,*) this agreement shall be void and of no effect; and further provided that this agreement shall not in anywise prejudice or affect the right or remedies of any creditor against any surety or sureties or any person or persons other than the debtor, his heirs, executors or administrators, nor any security, which any of us, his several and respective creditors, may have or claim for any debt or debts of the said debtor.

It is further agreed that unless this composition agreement shall be accepted by all the creditors of the said debtor, and shall be signed by all of them on or before the (*fifteenth*) day of (*December, 1913,*) these presents shall be void and of no effect.

It is also expressly agreed that all of the covenants and agreements and conditions herein contained shall extend to and bind our several and respective executors, administrators and assigns, as well as ourselves respectively and severally.

IN WITNESS WHEREOF, we, the said several creditors of the said (*John O. Wheeler,*) have hereunto set our respective hands and seals this (*twenty-fifth*) day of (*November, 1913.*)

* If the notes are not paid, the original debt revives.

To Share Expenses of Law Suit

FORM No. 539

Agreement to Share Expense of Law Suit

WHEREAS, (*James Oliphant, Henry Rogers, Charles Campbell and Thomas Perry,*) all of (*the City of White Plains, New York,* are owners respectively of four parcels of land situate on the easterly side of Westchester avenue, between Third and Fourth streets, in said City of White Plains, each of which parcel extends fifty (50) feet along the line of said avenue;) and

WHEREAS, (*the City of White Plains* has made an assessment of \$135.00 upon each of said parcels for certain public improvements in said City,) as to the legality of which the parties hereto are desirous of obtaining a judicial determination; and

WHEREAS, (*James Oliphant,*) above named, has retained counsel and is about to institute a proceeding in the (*Supreme*) Court of (*Westchester County*) to have (*the assessment upon the parcel of land owned by him reviewed and its legality determined,*) and the decision of such proceeding will in effect determine the legality of (*the assessment upon the parcels owned by each of the parties hereto:*)

NOW, THEREFORE, in consideration of the foregoing it is agreed this (*third*) day of (*October, 1915,*) by and between the said (*James Oliphant, Henry Rogers, Charles Campbell and Thomas Perry,*) as follows:

I. The said (*James Oliphant*) agrees to promptly and vigorously prosecute the proceeding above referred to, and will by appealing to the (*Appellate Division of the Supreme Court and to the Court of Appeals of this State,*) if so advised by counsel, and by taking such other steps as he is advised by counsel are best suited to accomplish that purpose, endeavor to obtain a prompt and final determination as to the legality of (*said assessment, as to the amount thereof, and as to the method of making the same.*)

II. The said (*Henry Rogers, Charles Campbell and Thomas Perry*) respectively and severally agree to share and defray (*one-fourth*) of the amount of all expenses necessarily incurred by said (*James Oliphant*) in connection with the carrying on of the litigation above referred to, including the fees of attorneys and counsel and all costs and disbursements for which the said (*James Oliphant*) may become liable by reason of said litigation, and respectively and severally agree to pay to the said (*James Oli-*

Credit Extension

plant) within (*thirty*) days from the date hereof the sum of (*two hundred*) (200) dollars each, to be applied towards defraying such expenses as they accrue.

And each of the terms of this agreement is intended to apply to and bind the executors, representatives and assigns of each of the parties hereto.

(Witness.)

(SOLOMON KETCHEM,)

(JAMES OLIPHANT,) (SEAL.)

(HENRY ROGERS,) (SEAL.)

(CHARLES CAMPBELL,) (SEAL.)

(THOMAS PERRY.) (SEAL.)

(Acknowledgments)

FORM No. 540

Credit Extension Agreement

MEMORANDUM OF AGREEMENT, made this (15th) day of (*August*, 1916,) between (*George H. Dayton and Alexander Adams, composing the firm of Dayton & Adams,*) and the (*Wyoming Amalgamated Copper Company,*) part(ies) of the first part and (*Charles Tomkinson,*) party of the second part.

WHEREAS, the part(ies) of the first part are justly indebted to the party of the second part in the sum of (*Twenty-three hundred and seventy-one dollars forty-two cents*) (\$2,371.42) with interest thereon from the (24th) day of (*May*, 1916,) for (*certain work, labor and services performed and materials furnished in making certain alterations and repairs in and about their places of business in the King's Court Building, on the southwest corner of Exchange Place and William Street, in the Borough of Manhattan, City of New York,*) and

WHEREAS, the part(ies) of the first part are not in a position at the present time to pay said indebtedness and desire further time to liquidate same without impairing any of the rights and remedies under the law of the party of the second part, and

WHEREAS, the time within which the party of the second part to file a Mechanic's Lien against said property under the statute . expires on the (22nd) day of (*August*, 1916,) and

Credit Extension

WHEREAS, the par(*ties*) of the first part, believing that they will be able to pay said indebtedness before said last mentioned date, are desirous of delaying the filing of such lien to the (21st) day of (*August, 1916,*) and to that end have offered to further secure such indebtedness without impairing any of the rights which the party of the second part may have against the (*Directors of said Company*) or any remedies he may have under the law,

NOW, THEREFORE, this Agreement witnesseth that for and in consideration of the premises and of the sum of (*One Dollar*) by each party to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

First. Upon signing of this agreement, the part(*ies*) of the first part will execute and deliver to the party of the second part a promissory note for the amount of said indebtedness with interest from the (24th) day of (*May, 1916,*) dated the (15th) day of (*August, 1916,*) made by the (*Wyoming Amalgamated Copper Company,*) payable to (*Charles Tomkinson,*) (*three months*) after the date thereof, at (*the office of William D. Harvey, 120 Broadway, Borough of Manhattan, New York City,*) and duly endorsed by (*Dayton & Adams and Stephen W. Lowney,*) which said note is not to be accepted as payment of, but as additional security for said indebtedness.

Second. The party of the second part will take no further action or proceeding for the recovery of said indebtedness until the (21st) day of (*August, 1916,*) when, if the said indebtedness is not paid he may file a notice of Mechanic's Lien under the statute for the amount of said indebtedness.

Third. That after the filing of the said notice of Mechanic's Lien, the party of the second part will not foreclose said lien or take any other action or proceeding for the recovery of said indebtedness until said note is paid or becomes due, provided the thirty days' notice under the statute is not served or he is not otherwise compelled to act under the law for the protection of his said claim.

Fourth. That this Agreement is made without prejudice to any of the rights and remedies of the party of the second part in the premises, and is not to be considered in any way as waiving any remedy which said party of the second part may have against any of (*the Directors of said Company*) or under the provisions of the

Sale of Real Property

Mechanic's Lien Law of the State of New York, except as herein specifically provided.

Witness our hands and seals the day and year first above written.

(DAYTON & ADAMS,) (SEAL.)

By (George H. Dayton,) Pres.

(THE WYOMING AMALGAMATED
COPPER CO.) (SEAL.)

By (F. E. Readman,) Sec'y,
(CHARLES TOMKINSON.)

In presence of: as to (Dayton and Adams,
and The Wyoming Amalgamated Copper
Company,

JAMES J. DALTON.)

As to (Chas Tompkinson,

ERNEST J. GRAY.)

FORM No. 541

Agreement for Sale of Real Property*

AGREEMENT, made this (24th) day of (January, 1915,) between (Lewis Munson,) of (the Borough of Manhattan, City of New York,) hereinafter described as the seller, and (Leonore Fancher,) of (the same place,) hereinafter described as the purchaser,

WITNESSETH, That the seller agrees to sell and convey, and the purchaser agrees to purchase all that lot of land, with the buildings and improvements thereon, in the (Borough of Manhattan, City of New York,) and described as follows:

(metes and bounds)

All notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by the Tenement House Department, Fire Department, State Labor and Factory Departments, Building Department, or Department of Water Supply, Gas and Electricity, against or affecting the premises at the date hereof, shall be complied with by the seller and the respective premises shall be conveyed free of the same. The seller shall

* See Information to Obtain before Signing, pages 23 and 27.

Sale of Real Property

furnish the purchaser with proper authorizations to make the necessary searches therefor.

[It is hereby understood and agreed between the parties hereto that the party of the first part is under contract for the purchase of the above-described premises, and should he be unable to secure good and sufficient title to the same, then and in that event this contract shall become null and void, and neither shall have any claim against the other by reason of the non-fulfillment of this contract, except that the seller shall repay to the purchaser the sum of two thousand dollars (\$2,000) with interest thereon at three per cent. (3%).]

The price is (*thirty-eight thousand five hundred*) (\$38,500) dollars, payable as follows: (*Two thousand*) (\$2,000) dollars on the signing of this contract, the receipt of which is hereby acknowledged. (*Seven thousand five hundred*) (\$7,500) dollars in cash or certified check on the delivery of the deed as hereinafter provided. (*Twenty-five thousand*) (\$25,000) dollars by taking the said premises subject to a first mortgage, now a lien thereon for that amount, interest on which is at the rate of five per cent. (5%) per annum, principal due in November, 1917; held by Anna Upton.)

(*Two thousand* (\$2,000) dollars by taking said premises subject to a second mortgage, now a lien thereon for that amount interest on which is at the rate of five per cent. (5%) per annum, principal due on or before two years from the date thereof.)

(*Subject to leases expiring not later than May 1, 1915, and to monthly tenancies.*)

(*Two thousand* (\$2,000) dollars by the purchaser executing and delivering to the seller his bond and purchase-money mortgage covering said premises for said sum of two thousand (\$2,000) dollars for three years with interest thereon at the rate of six per cent. per annum, payable semi-annually.)

(*The said bond and mortgage to be in form satisfactory to the seller and to be prepared by the counsel for the seller at the expense of the purchaser. The purchaser shall also pay the recording tax on said mortgage and the recording fees.*)

All fixtures and personal property appurtenant to or used in connection with said premises are included in this sale.

If there be water meters on the premises, the seller shall furnish readings to dates not more than thirty days prior to the time herein set for closing title and the unfixed meter charges for the

Exchange of Real Property

intervening time shall be apportioned on the basis of such last readings.

The deed shall be delivered upon the receipt of said payments at the office of (*Carr & Carr, 2 Rector Street, New York City,*) on (*March 10, 1917, at 12 o'clock noon.*)

The deed shall be a full covenant warranty deed in proper form, and shall be duly executed and acknowledged by the seller, at the seller's expense, to convey to the purchaser, or the purchaser's assigns, the absolute fee of the above premises, free of all incumbrances, except as above stated.

All instruments to be given hereunder are to be in the statutory short form.

Rents and interest on mortgage, if any, and insurance premiums are to be apportioned.

The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the (*seller.*)*

The stipulations aforesaid are to apply to and bind the successors, heirs, executors, administrators and assigns of the respective parties.

[The seller agrees that brought about this sale, and agrees to pay the broker's commission therefor.]

WITNESS the hands and seals of the above parties.

IN PRESENCE OF

(*LEWIS MUNSON,*) [L. S.]

(*LEONORE FANCHER.*) [L. S.]

(*HENRY MARK,*)

(*RICHARD MARKHAM,*)

(Acknowledgments)

FORM No. 542

Agreement for Exchange of Real Property

AGREEMENT, made this (15th) day of (*November, 1916,*) between (*Herbert Donovan,*) of (*the Borough of Manhattan, City of New York,*) herein throughout described as the party of the first part, and (*Paul Plum, of the Borough of Brooklyn, in said City of New York,*) herein throughout described as the party of the second part, witnesseth:

* "Buyer" sometimes inserted.

Exchange of Real Property

I. That the party of the first part agrees to sell and convey, upon the terms and conditions hereinafter expressed; and the party of the second part agrees to purchase all that certain lot, piece or parcel of land, in (*the Borough of Manhattan, City of New York,*) with the buildings and improvements thereon, described as follows: (by metes and bounds.)

II. The party of the second part agrees to sell and convey, upon the terms and conditions hereinafter expressed, and the party of the first part agrees to purchase all that certain lot, piece or parcel of land, in (*the Borough of Brooklyn, City of New York,*) with the buildings and improvements thereon, described as follows: (by metes and bounds.)

The price which the party of the second part agrees to pay is (*twenty thousand*) (\$20,000) dollars, and is to be payable as follows:

- | | |
|--|----------|
| (<i>Five hundred</i>) dollars on the signing of this contract, the receipt whereof is hereby acknowledged. | (\$500) |
| (<i>Five hundred</i>) dollars in cash on the delivery of the deeds as hereinafter provided. | (500) |
| (<i>Twelve thousand</i>) dollars by (<i>taking the premises to be conveyed by the party of the first part subject to a first mortgage, now a lien on the premises for that amount, held by Joseph Stern, the interest on which is at the rate of five per cent. (5%) per annum, principal due in November, 1920</i>) | (12,000) |
| (<i>Seven thousand</i>) dollars by executing and delivering to the party of the first part or his assigns, at the expense of the party of the second part, a proper deed of the premises above-described as to be sold and conveyed by the party of the second part, the value of which it is hereby agreed is (\$18,000, <i>subject to a first mortgage for eleven thousand dollars, now a lien upon the said premises for that amount, held by John Brown, the interest at four per cent. (4%) per annum, principal due in June, 1905, which mortgage the party of the first part agrees to assume and discharge</i>) | (7,000) |
-

The deeds of the premises to be conveyed shall be delivered at the office of (*Nash & Nash, 120 Broadway, Borough of Manhattan, City of New York,*) on the (15th) day of (*December, 1916,*) at (*twelve*) o'clock (*noon.*)

Exchange of Real Property

And the said party of the first part, on receiving such payment at the time and in the manner above mentioned, shall, at his own expense, execute, acknowledge and deliver, to the said party of the second part, or the assigns of the party of the second part, a proper deed containing the usual full covenants and warranty for the conveying and assuring to the party of the second part, or the assigns of the party of the second part, the fee simple of the said premises free from all encumbrances except as herein stated.

All notes or notices of violations of law or municipal ordinances, orders or requirements noted in or issued by the Tenement House Department, Fire Department, State Labor and Factory Departments, Building Department, or Department of Water Supply, Gas and Electricity, against or affecting the premises at the date hereof, shall be complied with by the respective parties and the respective premises shall be conveyed free of the same. The respective parties shall furnish each other with proper authorizations to make the necessary searches therefor.

The chandeliers, gas fixtures, ranges, heating and hot-water apparatus, water closets, bath tubs and other plumbing, and all personal property appurtenant to or used in connection with either of said premises are to be included in this sale and in the warranty above set forth.

The rents of each of the said premises, insurance premiums, and interest on mortgages, if any, shall be adjusted, apportioned and allowed up to the day of taking title to each.

If there be water meters on the premises, the respective parties shall furnish readings to dates not more than thirty days prior to the time herein set for closing title and the unfixed meter charges for the intervening time shall be apportioned on the basis of such last readings.

The risk of loss or damage to said premises by fire or any other cause, until the delivery of the deeds, is assumed by each of the parties hereto as to the premises to be conveyed by him. It is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

All instruments to be given hereunder are to be in the statutory short form.

Sale of Real Property — Purchaser

(The party of the first part agrees that brought about this exchange, and agrees to pay said broker his commission of dollars therefor.)

Where there is an exchange each party pays the broker the estimated value of his property put in the exchange.

WITNESS the hands and seals of the above parties.

(HERBERT DONOVAN,) (SEAL.)

(PAUL PLUM.) (SEAL.)

In presence of

(ALFRED DAVIES.)

(Acknowledgments)

FORM No. 543

Contract for Sale of Real Property (When Acting for Purchaser)

AGREEMENT, made and dated between hereinafter described as seller, and hereinafter described as purchaser.

WITNESSETH, that seller agrees to sell and convey, and purchaser agrees to purchase all that parcel of land, with the buildings and improvements thereon, in the..... bounded and described as follows:

(Accurate description by metes and bounds, according to survey.)

The price is dollars, payable as follows:

..... dollars on the signing of this contract, the receipt of which is hereby acknowledged.

.....dollars in cash or certified check satisfactory to seller on the delivery of the deed as hereinafter provided.

The deed shall be delivered upon the receipt of said payments at the office of

Sale of Real Property — Purchaser

at o'clock, on the, 191... All rents, interest on mortgages, if any, gas range rents and all fire, plate glass and casualty insurance premiums on insurance now in force shall be apportioned as of the day of closing title, provided, however, that seller produces satisfactory proof to the purchaser that such premiums have been paid.

Seller agrees to pay over to purchaser at the time of closing title all sums held by seller as security for leases on said premises.

If there be a water meter on the premises, seller shall furnish a reading to a date not more than thirty days prior to the time herein set for closing title and the unfixed meter charge for the intervening time shall be apportioned on the basis of such last reading.

The deed shall be in proper statutory short form for record, shall contain the usual full covenants and warranty, and shall be duly executed, acknowledged by seller, at seller's expense, so as to convey to purchaser the fee simple of the said premises, free of all incumbrances except

This sale covers all right, title and interest of the seller of, in and to any land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining said premises, to the center line thereof, and all right, title and interest of seller in and to any award made or to be made in lieu thereof, and in any award for damage to said premises by reason of change of grade of any street, and the seller will execute and deliver to the purchaser, on closing of title, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award.

The seller represents that all the personal property appurtenant to or used in the operation of said premises except is owned by the seller absolutely and is included in this sale.

The seller also represents that all space used for vaults under the sidewalk in front of the premises above described has been lawfully taken by the seller, or his predecessor in interest, under a license from the City of New York, and that the city's charges therefor have been fully paid.

If at the time for the delivery of the deeds the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in

 Sale of Real Property — Building Loan

annual installments of which the first installment is then due or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller thereof, on or before the delivery of the deed.

All notes or notices of violation of law or municipal ordinances, orders or requirements noted in or issued by the Tenement House Department, Fire Department, Building Department, or Department of Water Supply, Gas and Electricity, Department of Labor or Department of Fire Prevention or any other State, municipal or governmental department or bureau against or affecting the premises at the date hereof, shall be complied with by the seller and the premises shall be conveyed free of the same. The seller shall furnish the purchaser with an authorization to make the necessary searches therefor.

All sums paid on account of this contract, and the reasonable expense of the examination of the title to said premises are hereby made liens thereon, but such liens shall not continue after default by the purchaser under this contract.

The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the seller.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

WITNESS the signatures and seals of the above parties.

In presence of:

.....

 FORM No. 544

**Contract for Sale of Real Property With Building Loan to be Made
by Seller**

AGREEMENT made and dated this (25th) day of (January, 1915,) between (Louis R. Shaw, Ira A. Selley and Frank M. Warren, as trustees under deed from Albert Hale to Louis R.

Sale of Real Property — Building Loan

Shaw and others, dated April 13, 1909,) hereinafter described as the seller or lender, and (*William Hooper,*) now residing at (*No. 456 Fort Washington Avenue, New York City,*) hereinafter described as the purchaser or borrower.

WITNESSETH, that the seller agrees to sell and convey or cause to be conveyed, and the purchaser agrees to purchase all that plot or parcel of land, with the buildings and improvements thereon, in (*the Borough of Manhattan, City of New York,*) known as (*The Warwick Theatre property, Nos. 608 and 610 Sixth Avenue, and Nos. 1356 and 1358 Broadway,*) and more fully described in Schedule "A," hereto annexed.

The purchase price is (\$650,000,) payable as follows:

(*Five thousand*) dollars on the signing of this contract, the receipt of which is hereby acknowledged.

(*Twenty thousand*) dollars, in cash, on the delivery of deed as hereinafter provided.

(*Six hundred and twenty-five thousand*) dollars by bond of the purchaser, secured by mortgage covering the said premises, as hereinafter set forth.

The deed and other instruments to be delivered on the closing of title shall be delivered at the office of (*the Title Guarantee and Trust Company, 176 Broadway, Borough of Manhattan, City of New York,*) on the (30th) day of (*January, 1915,*) at (10:30 a.) m. o'clock.

The purchaser agrees, within (*one month*) from the date hereof, and prior to the closing of title hereunder, to cause to be prepared by a competent architect, plans and specifications conforming with all laws and municipal regulations and satisfactory to the seller, for the erection upon said land of the building described in Schedule "B" hereto annexed (hereinafter described as the building), and after obtaining the seller's written approval, continuously to proceed with the erection of said building so that the same will be enclosed within (*nine*) (9) months after the delivery of the said deed, and completely finished and ready for occupancy within (*twelve*) (12) months from said delivery.

The seller agrees that if the purchaser proceeds with the erection of the building, as above provided, the seller will loan or procure to be loaned to the purchaser the sum of (*three hundred and seventy-five thousand* (\$375,000)) dollars, to be advanced in installments as set forth in Schedule "C" hereto annexed.

Sale of Real Property — Building Loan

The balance of (\$625,000) of the purchase price and the (\$375,000) to be advanced for the erection of the building shall be secured by bond of the purchaser, and a purchase money and building loan first mortgage for (\$1,000,000.) Said mortgage shall be a valid first lien on a good and marketable title in fee to said premises for all sums that may be advanced on such bond and mortgage, subject to no encumbrances, except such as may be waived by the lender. Said bond and mortgage shall be in the ordinary form used by and shall contain clauses usually employed by (*the Title Guarantee and Trust Company*) in its bonds and mortgages, with such additional clauses or changes as the lender may require, and also a clause to the effect that if the purchaser does not proceed with the erection of the building, as above provided, such bond and mortgage and the amount secured thereby shall become due at the option of the holder thereof. Said bond and mortgage shall bear interest at the rate of (5) per cent. on (\$625,000) thereof, from the (30th) day of (*July*, 1915,) and at (6) per cent. on the amounts advanced for the erection of the building, interest to be calculated on the advances from the dates of the respective advances. The interest shall be payable quarterly.

Upon the completion of the building, ready for occupancy, and upon the presentation by the purchaser to the seller, of certificates from all departments and bureaus having jurisdiction in the premises, and also from the Board of Fire Underwriters, certifying that the building and its appliances may be used and each of them has been approved by the particular department or bureau having jurisdiction in the premises, the interest shall be at the rate of (5) per cent. per annum. The mortgage shall fall due on the (*first*) day of (*January*, 1925,) except that (*the sum of \$25,000 per year shall be paid in each year, beginning with the year 1917, the first payment of \$6,250 to be made on the first day of January, 1917, and quarterly payments of \$6,250 on each subsequent April, July, October and January 1st,*) until the principal amount of said mortgage shall be reduced to (\$900,000.)

The purchaser shall pay the charges for drawing the bond and mortgage and the building loan agreement, recording of mortgage and the mortgage recording tax, and also all other Federal taxes required to be paid for recording of the deed or other Federal or stamp tax required on any of the instruments to be delivered in pursuance of this contract.

Sale of Real Property — Building Loan

The purchaser shall furnish to the seller a bond or bonds of a surety company, or of surety companies, to insure the completion of the building in accordance with the terms of this contract; such bond or bonds shall be in the penalty of (*one hundred thousand* (\$100,000)) dollars, unless the seller shall consent to accept surety company bond or bonds for a smaller amount, and shall be furnished by a company or companies satisfactory to the seller, and shall be in form or forms satisfactory to the seller. The purchaser shall also pay an amount not to exceed (1) per cent. of (\$375,000) to cover the costs of supervision by the seller's architect or agent. The purchaser shall also furnish to the seller, at the expense of the purchaser, a policy of title insurance guaranteeing the mortgage, which is to be delivered to the seller. The purchaser shall take out policies of general liability insurance to protect against accident in the demolition of the present building or buildings and the erection of the new building, and deposit such policies with the seller. Such insurance is to be of amounts and in form and in companies satisfactory to the seller, and the purchaser shall also take out and maintain policies of fire insurance upon the said building during construction and upon the materials and labor entering into the same in amounts and in forms and in companies satisfactory to the seller and with loss, if any, payable to the seller, as interest may appear.

In case the purchaser shall not present plans and specifications to the seller in form satisfactory to the seller by the (20th) day of (*January*, 1915,) but shall within (*twenty*) days thereafter furnish plans that are satisfactory, then the closing of title shall be adjourned to a date not later than (*February* 20, 1915,) but title shall close as of (*January* 30, 1915.)

If the purchaser shall so elect, he may convey the premises, subject to the mortgage herein provided for, to (*Howard Hooper, Inc.*,) or to some other domestic corporation, approved by the seller, and in case of such conveyance, advances may be made to such corporation with the same force and effect as if made to (*William Hooper*,) and such a conveyance and advances thereafter made shall be deemed to be in pursuance of and not in modification of this agreement, but such consent to assignment shall operate for that instance alone and the purchaser shall in no wise be released from any liability or responsibility in regard to this contract and the performance thereof.

Sale of Real Property -- Building Loan

First. Said mortgage shall contain the clauses employed by the (*Title Guarantee and Trust Company*) in its building loan mortgages and such other clauses as the lender may require, and is hereinafter referred to as "the mortgage."

Second. The borrower agrees to take such loan and covenants to observe the terms of this agreement.

Third. The following provisions shall be observed in and about the construction of the building:

(a) Should the plans or any modification thereof not be in the hands of the lender at the time of the execution of this agreement, they shall be submitted to the lender before they are approved by the Superintendent of Buildings.

(b) The building shall be constructed in strict accordance with the plans and specifications approved by the lender.

(c) The lender shall have sufficient notice to permit an examination of the bottom of the trenches before foundation concrete is started.

(d) If there be steel in the construction of the building, the members of the steel work shall be painted after construction, a field coat different from the shop coat, and of a quality of paint approved by the lender.

(e) The details of the floor construction and framing plans shall be submitted to the lender for approval before the contract therefor is let.

(f) Permanent stairs with temporary treads shall be erected as rapidly as the frame work is erected, but if the permanent stairs shall be delayed, temporary plank stairs shall be erected in lieu thereof.

(g) After floor filling is completed and before the wood flooring is laid in each story, sufficient notice shall be given to the lender to enable inspection of the same.

(h) The lender shall have sufficient notice when tests of the plumbing and framing systems and structural work are to be made, and any further tests required by the lender shall be made by the contractors for such work under the direction of the lender, at the expense of the borrower.

(i) The frame work of all fireproof buildings shall be of steel and all connections within a three-foot radius of columns shall be riveted.

(j) The lender shall be given an opportunity to examine all

Sale of Real Property — Building Loan

cast iron work used in the construction of the building before it is painted, and no cast iron members shall be used which are not approved by the lender. Any such member which may not have been so approved which shall be incorporated in the building shall be removed whenever required by the lender.

Fourth. During the construction of the building, the lender and the holder of the mortgage and the lender's architects and engineers and any other authorized representative of the lender or seller may from time to time inspect the building and shall be furnished, if required by them, with copies of all plans, detailed plans, shop drawings and specifications relating to the construction of the building, and they may examine all plans, detailed plans, shop drawings and specifications which are kept at the work.

Fifth. No advance shall be due unless all work usually done at the stage of construction when the advance is payable under the terms of Schedule "C" be done in a good and workmanlike manner, and all materials and fixtures usually furnished and installed at such stage of construction, be furnished and installed; nor unless all iron work and construction be approved by an engineer satisfactory to the lender, nor unless the premises and all of the property herein referred to shall be free from mechanic's liens and that there shall be presented to the lender a certificate of the New York County Clerk to that effect.

Parts or the whole of any installments may be advanced before they become due if the lender or holder of the mortgage believe it advisable so to do and all such advances or payments shall be deemed to have been made in pursuance of this agreement and not to be modifications thereof. The making of any advance or any part of an advance shall not be deemed an approval or acceptance by the lender or the holder of the mortgage of the work theretofore done. The holder of the mortgage may make any advances or parts of any advances after the happening of any of the events specified in the clause of this agreement numbered seventh without thereby waiving the right to demand payment of the mortgage debt and without becoming liable to make any other or further advance. All advances are to be made at the office of (*Kane, Loft and Company, 32 William Street, New York City,*) and the borrower is to give to the lender three days' notice in writing before demanding any advance.

Sixth. If the construction of the building is not carried on with

Sale of Real Property — Building Loan

reasonable dispatch, or should be discontinued at any time, the holder of the mortgage may protect or complete the building; if any mechanic's lien or liens should be filed against said premises, such holder may retain or deposit in behalf of the borrower, with the clerk of the county in which said premises are situated, sums sufficient to discharge such lien or liens; if the building be not completed or be untenanted, such holder may take possession thereof, employ watchmen to protect the building from depredation or injury, and may preserve and protect the fixtures and property therein; if interest should become overdue on any prior mortgage, such holder may pay the same; if any taxes, assessments or water rates affecting said premises should become due and remain unpaid, such holder may pay the same; any sums paid or expended in accordance with any of the foregoing provisions of this clause shall be deemed to be advanced to the borrower and shall be secured by said bond and the mortgage and at the option of the holder of the mortgage, may be deducted from any advance thereafter becoming due.

Seventh. Whenever and as often as any of the following events occur before the amount of said loan is fully advanced, all obligation on the part of the lender or the holder of said mortgage to make or procure any further advances shall cease, if the lender so elect, and the said mortgage debt shall become due and payable at the option of the lender or of the holder of the mortgage, anything therein or in said bond contained to the contrary notwithstanding:

(a) If a copy of the plans and specifications of the building and of any modifications thereof be not furnished to the lender whenever the lender shall require the same.

(b) If the plans and specifications shall not be satisfactory to the lender.

(c) If the plans be not approved by the Building Department before an advance is demanded.

(d) If the building be not erected in strict accordance with the plans and specifications approved by the lender.

(e) If the materials or construction of the building be not satisfactory to the lender.

(f) If any materials, fixtures or articles used in the construction of the building or appurtenant thereto should be purchased by the borrower or any contractor or other person furnishing labor or materials to the building, so that the absolute ownership of

Sale of Real Property — Building Loan

such materials, fixtures or articles will not vest in the borrower immediately on delivery thereof at the building.

(g) If the borrower do not disclose to the lender the names of all persons with whom the borrower contracts or intends to contract for the construction of the building or the furnishing of labor or materials therefor and obtain the acceptance by the lender of such persons as contractors upon the building.

(h) If the borrower do not produce upon demand the contracts, bills of sale or agreements or any of them under which the borrower claims title to the materials, fixtures and articles used in the construction of the building and appurtenant thereto.

(i) If the borrower should not proceed continuously with the erection and completion of the building (stoppage by reason of actual strikes excepted).

(j) If a survey should show that the building encroaches upon property other than that described in Schedule A, to an extent deemed material by the lender.

(k) If there should be at any time any note or notice of violation of law or of any municipal regulation or ordinances filed in or issued by any public department or authority against the building or against the borrower by reason of any matter in or about the construction of the building.

(l) If the building should be materially injured or destroyed by fire or other casualty.

(m) If the borrower do not observe the provisions of the clauses of this agreement numbered third and fourth.

(n) If the borrower should assign this contract or any interest therein, or any right to receive any payment or portion of a payment herein provided for, or give or issue an order on the lender or holder of the mortgage for the payment of any money payable under this agreement.

(o) If a petition in bankruptcy should be filed by or against the borrower, or if the borrower shall make a general assignment for the benefit of creditors or if a receiver of the borrower's property shall be appointed.

(p) If the borrower should convey said premises or any interest therein.

(q) If the premises should become encumbered by any lien or encumbrance not herein provided for.

(r) If default should be made in the payment of interest upon any of the mortgages herein mentioned.

Sale of Real Property — Building Loan

The mortgage may contain the foregoing provisions or any of them but the omission of any of such provisions shall not be a waiver of any of them.

Eighth. So much of the loan as may be required therefor may be applied by the lender to the payment, satisfaction or disposition of any mortgage or mortgages or other encumbrances now affecting the premises or which may hereafter affect the same, and such application may be made whenever the lender shall so elect. So much of the loan as may be necessary for that purpose may be applied under the direction of the borrower to the payment of any fees, brokerage or other expenses incident to the obtaining or making of the loan herein agreed to be made.

Ninth. The borrower shall pay all fees heretofore agreed to be paid to the lender or any other person or corporation, the expense of examination of title, the recording tax upon the mortgage, the charges for drawing and recording papers and for all searches which may be required by the lender to assure the lender that the mortgage is a lien as herein covenanted; the borrower shall furnish to the lender, or the lender may procure, surveys made by a surveyor satisfactory to the holder of the mortgage whenever required by such holder; any such fees and charges and the charges for surveys may be deducted from any advance whenever the lender shall elect so to do.

Tenth. At the option of the lender or holder of the mortgage no advance need be made so long as there exists any violation or notice of violation of any of the requirements of the Board of Fire Underwriters or so long as there is noted in any municipal or other public department, any note or notice that the building violates any provision of law or ordinance or does not comply with any provision of law or any ordinance applicable thereto. The borrower shall furnish to the lender official searches made in such departments whenever required so to do.

Eleventh. In case the building be one to which the provisions of the Tenement House Law apply,

(a) The first advance shall not be due until the plans shall have been approved by the Tenement House Department, and a written certificate to that effect shall have been issued by such department.

(b) No other advance shall be due unless the building shall comply with the provisions of the Tenement House Law, so far as such law then may be applicable.

Indemnity Without Sureties

(c) The last advance shall not be due until the borrower shall produce a certificate issued by the Tenement House Department, that said building conforms, in all respects, to the requirements of said law.

Twelfth. So much of any advance as may be necessary may be applied to the payment of accrued interest on any mortgage mentioned in this contract and to any sums owing by the borrower to the lender for fees, surveys, recording and other proper charges.

Thirteenth. The lender or holder of the mortgage may release portions of the mortgaged premises at any time upon receiving what, in the opinion of the lender, is a proper payment on account of the mortgage debt.

Fourteenth. The lender or any holder of said bond and mortgage may extend the payment of the principal secured by said bond and the mortgage, and any extension so granted shall be deemed made in pursuance of this agreement and not to be a modification thereof.

Fifteenth. Notices from the lender to the borrower may be given by mailing the same to the borrower addressed at (No. 110 West 40th Street, New York City,) and any notice so given shall be deemed to be sufficient for all purposes.

IN WITNESS WHEREOF, the parties hereto have signed and sealed these presents the day and year first above written.

(LOUIS R. SHAW,) (SEAL.)

(IRA A. SEELEY,) (SEAL.)

(FRANK M. WARREN,) (SEAL.)

(WILLIAM HOOPER.) (SEAL.)

(Acknowledgments)

FORM No. 545

Agreement of Indemnity Without Sureties

THIS AGREEMENT, entered into this (27th) day of (September, 1916,) between the (World Indemnity Company, hereinafter called the company,) and the (West Side Club, hereinafter called the club,) WITNESSETH:

WHEREAS, the (company) heretofore recovered a judgment against (The Independent Taxi Company,) which amounts with

Indemnity Without Sureties

interest and costs to (*four hundred ninety-seven and 97/100 (\$497.97)*) dollars, and in a proceeding supplementary to execution brought by the (*company*) against the said judgment-debtor an order was made in (*the City Court of the City of New York on the 11th day of August, 1916,*) for the examination of the (*club*) as a third party in said supplementary proceedings and examination of the (*club*) as a third party through (*Arthur P. Pratt, its treasurer,*) having disclosed that the (*club*) has in its possession and is indebted to the said judgment-debtor for the sum of (*one thousand fifty-eight and 43/100 (1,058.43)*) dollars, and

WHEREAS, by an order of the (*City Court of the City of New York*) made in such proceeding by (*Mr. Justice Allen*) and dated (*September 1st, 1916,*) the (*club*) was permitted to pay over to the sheriff of the county of (*New York*) the sum of (*four hundred ninety-seven and 92/100 (\$497.92)*) dollars together with the legal fees and poundage, which said sheriff is entitled to under the execution issued upon the judgment in favor of the (*company*) hereinbefore described, and the (*club*) before making such payment to the sheriff desires to be properly indemnified by the (*company*) against any loss, cost, damage or expense of any kind or nature which it may sustain or be put to by reason of making such payment.

NOW, THEREFORE, in consideration of such payment to be made by the (*club*) to the sheriff, the (*company*) agrees to fully indemnify and save harmless the (*club*) from and against any loss, cost, damage or expense which the (*club*) may sustain or be put to by reason of making the payment above described pursuant to the order of (*Mr. Justice Allen,*) and the (*company*) further agrees to defend at its own cost and expense any action or legal proceeding which may be brought against the (*club*) by any other judgment-creditor of the (*The Independent Taxi Company*) or any other person.

The (*club*) agrees that it will give prompt notice to the (*company*) in writing, by letter addressed to it at its principal place of business, (*19 William street, borough of Manhattan, City of New York,*) and sent through registered mail, of any claim made or any action or special proceeding commenced against it arising out of the payment so made to the sheriff and will furnish to the (*company*) upon request any information, testimony, statements of account and any other facts and assistance within its power for

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the purpose of defending any claim so made or any legal proceeding or action so commenced.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers and their respective seals to be hereto affixed the day and date above mentioned.

(*WORLD INDEMNITY COMPANY,*) (L. S.)

By (*Samuel Weston,*) *Pres.*

(*WEST SIDE CLUB,*)

By (*Arthur Ayres,*) *Sec'y.*

In presence of:

(*MARTIN IRVING.*)

(Acknowledgments)

FORM No. 546

Syndicate Agreement

AGREEMENT, dated this (30th) day of (June, 1916,) by and between the respective parties whose names are hereto subscribed, hereinafter called the "SYNDICATE," severally, parties of the first part, and Messrs. and, hereinafter called the "SYNDICATE MANAGERS," parties of the second part.

WHEREAS, the Syndicate is desirous of purchasing part of the capital stock (now issued or that hereafter may be issued) of certain corporations located in New York City, provided such stock can be purchased within the terms and conditions hereinafter mentioned:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that in consideration of the premises and of their mutual promises and the expected benefits from the performance hereof the parties hereto severally agree with each other and with the Syndicate managers as follows:

First. The parties of the first part, members of the Syndicate, do, and each for himself, his legal representatives, assigns, successors and survivors, and not for the others, does agree with the Syndicate managers and with each other that they will contribute to a Syndicate fund, a sum equal to, but not in excess of, the

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amounts set opposite their respective signatures hereto, to be paid to the Syndicate managers as they may call therefor as hereinafter provided. Nothing herein shall be construed to render the subscribers or the Syndicate managers liable to contribute more than the amounts set opposite their respective names. It is further understood that all subscriptions hereto as to actual and proportionate amounts are made subject to allotment by the Syndicate managers, in their absolute discretion, each subscriber to be notified in writing of the amount allotted to him, such notification to become forthwith a part of this agreement. The Syndicate fund is to be used by the Syndicate managers for the purpose of purchasing and managing from an investment standpoint the stock above mentioned and loans and obligations secured by such stock, and in subscribing for, paying for and receiving and managing the stock above mentioned that may hereafter be issued for account of the Syndicate.

Second. The Syndicate managers from time to time during the continuance of this agreement, may make or cause to be made purchases of stock and loans and obligations secured by the stock above mentioned from any party hereto and otherwise, and in any market, and in such amounts and in such manner as they may deem expedient, and to subscribe for and to pay for and receive stock, above mentioned that may be hereafter issued.

Third. Each member of the Syndicate shall have at least ten days after call by the Syndicate managers within which to make the payments due by him hereunder, it being understood that one member shall not be called unless all are called and that the percentage of each allotment called shall be the same in every case. As each member of the Syndicate makes the payment called, he shall receive a receipt from the Syndicate managers stating the amount of his subscription or allotted subscription and the percentages thereof paid; the terms of such receipts and certificates to become forthwith upon issuance a part of this agreement. Each member of the Syndicate shall be responsible to the full extent of his subscription regardless of the payment or non-payment of the subscription of any other member of the Syndicate. In case of the failure of any member of the Syndicate to make punctually any payment when and as called by the Syndicate managers, or to perform any of his undertakings, herein fully and punctually, the latter are hereby empowered in their discretion to declare

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forfeited all rights hereunder of such defaulting member and exclude him from all rights, interest and participation hereunder, and to issue forthwith without notice and without public sale a receipt for this particular payment to any party hereto or other person whom they may allow to make such payment, such receipt indicating that the holder is a participant to the percentage indicated, in the benefits derived from the subscription of the defaulting Syndicate member; and in the final distribution of the assets and profits of the Syndicate, the Syndicate managers shall see that such substitute receives his *pro rata* proportion of the same. With the written consent of the Syndicate managers, — which they are authorized to give or withhold in their discretion, — as a condition precedent, a defaulting Syndicate member may be allowed to nominate another party to make any payment of his subscription and receive the proper receipt therefor entitling the holder to receive his *pro rata* proportion of the assets and profits of the Syndicate as finally determined. The participation of any defaulting member may be acquired by any party hereto or any other person without accountability to such defaulting member. However, a defaulting Syndicate member shall be responsible to each of the other Syndicate members for any damages caused by his default in payment or otherwise or in full and punctual performances hereof.

Fourth. As the stock shall be acquired by the Syndicate managers for the account of the Syndicate, the Syndicate managers may, if they deem it wise, cause the certificates therefor to be transferred into the names of the Syndicate managers, who shall immediately and duly endorse the same in blank.

A. So long as the Syndicate shall continue, and until final distribution of the Syndicate property, but not later than the (30th) day of (*June*, 1917,) the parties of the first part irrevocably and as part consideration hereunder assent to, and agree to be bound by, any action of the Syndicate managers, parties of the second part, taken hereunder, and hereby constitute the parties of the second part and their successors and appointees as herein said, the agents of the parties of the first part, with plenary power and discretion:

To hypothecate or to pledge for the Syndicate, all or any part of said stock, or all or any part of such loans or obligations secured by such stock, as may be purchased, such

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hypothecated or pledging permitting the Syndicate managers to purchase a larger amount of said stock, or loans or obligations secured by said stock, with a given amount of money than otherwise, and to borrow money thereon for the Syndicate, either by establishing an open account or making and delivering notes or otherwise in the name of the Syndicate managers for the Syndicate;

To vote upon and give proxies to vote upon and to sign and make agreements of any and all kinds in respect to any or all of such stock covered by this agreement at any and all meetings of the stockholders of said corporation or corporations for the election as directors of such persons as they may deem advisable; and for the increase of the capital and surplus, or either of them, of the said corporation or corporations to any amount soever, with full power to subscribe for the same in their name for the Syndicate or otherwise, and to purchase, hold and dispose of all or any part of the same in any manner they may deem advisable; and for the reduction of the capital and surplus, or either of them, of the said corporation or corporations to any amount soever; and for the amendment of its or their certificates of incorporation or charter and by-laws in any respect soever, including any change in or addition to corporate powers and purposes and including any change in the number or powers of the directors; and for the sale, exchange, disposition, or recapitalization of any or all of its or their assets or the assets of this Syndicate, or both, now held and which may hereafter be acquired — either to or through the existing or other corporations or individuals; and for any consolidation or merger of the said corporation or corporations with any other corporation or corporations or with each other; and for the purchase, holding, owning and voting of stock or other interests in any other corporation — and for entering into any agreement for community of interest with any other corporation; and for any or all such purposes and any other purposes and measures soever — and all upon such terms and conditions as in their discretion exclusively such Syndicate managers may deem advisable. Also, with regard to such stock — to collect, receive and give acquittance for any dividends, division of assets or other distribution; to receive and accept

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offers, tenders and notices made by said corporation or corporations in respect of any sale, exchange and disposition of any assets or other matters whatsoever; and to give such consents and take such action thereon as in their discretion exclusively they may deem best; and in general, to possess and exercise all the rights of stockholders of said corporation or corporations in respect to said stock, whether in their possession or distributed in whole or in part among the subscribers hereto, parties of the first part, and to represent and act thereon as fully as if they were the actual owners of the said stock; to employ brokers, agents, and counsel, and pay such charges for services rendered to themselves as Syndicate managers or as committee as they may deem reasonable; and all their acts in respect to said stock and in accordance with the powers hereby conferred expressly or by fair implication shall be binding and conclusive upon the Syndicate and each and every of its members.

B. In the event of the death, resignation or inability to serve of a Syndicate manager, the vacancy shall be filled by a majority vote of the surviving Syndicate managers, or, if there be but one survivor the vacancy or vacancies shall be filled by him; or may be left unfilled. The Syndicate managers shall have power to appoint additions to their number whenever they deem wise. Such successors or appointees, upon signing this agreement, shall thereupon be and become members of said Board of Syndicate managers and parties hereto of the second part, with all powers and duties as if originally made parties of the second part hereto. It is understood that in the same manner as other members of the Syndicate, the Syndicate managers may become subscribers to and participants in said Syndicate, with all the rights and obligations of such subscribers and participants. But the Syndicate managers shall have the sole direction and management of the Syndicate.

C. Action to be taken upon questions arising before the Syndicate managers from time to time shall be determined by a majority of those then acting as Syndicate managers, either at a meeting, or without a meeting, by the consent in writing of such majority; and in like manner they may establish their rules of action. But for any particular action or for a length of time not exceeding sixty days, any Syndicate manager may delegate in writing any

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or all of his authority to another, and the action of the Syndicate manager so delegated in writing shall be deemed the action of both.

D. Books shall be kept by the Syndicate managers containing the names and addresses of such of the members of the Syndicate as shall furnish the same to them. Any notice hereunder shall be deemed to have been duly given if mailed to subscribers directed to the addresses so furnished. The Syndicate managers shall be under no obligations to give any notice to any subscriber who shall not have furnished an address.

Fifth. This agreement shall continue in force and operation until finally terminated at the option of the Syndicate managers when notice thereof will be given to the subscribers. But if such option be not exercised prior to the 30th day of June, 1917, this agreement shall finally terminate on that day. When terminated there shall be a distribution of all assets, stock, rights and profits (though there may be a partial distribution at any time prior thereto in the discretion of the Syndicate managers) with full power to the Syndicate managers at any time or times before distribution to exchange or to sell at public or private sale with or without notice the whole or any part thereof belonging to the Syndicate. At the time of such termination the net profit that may accrue through the carrying out of this agreement and the operations of the Syndicate managers hereunder shall be and remain the property of the several members of the Syndicate, or their assigns, in whole or in part according to the amount and ratio of their respective subscriptions. The Syndicate managers in making a distribution shall first retain their disbursements for expenses and, in addition thereto, seven per centum of the total cost of such above-mentioned stock as may be acquired, for the services rendered by them as committee and Syndicate managers to the Syndicate which in their discretion they may deduct, disburse and pay out from time to time during the life of the Syndicate. Upon final distribution without other charge or deduction, except as aforesaid, they shall divide, pay over and distribute to the parties entitled thereto, the net assets, stock rights, net profits and all other net benefits which they may have received as the agents of the Syndicate.

Sixth. The parties hereto severally agree not to become interested, save through said Syndicate managers for the account of

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the Syndicate under this agreement, in the purchase or sale of the said stock issued or when and as issued without the approval in writing previously obtained from said Syndicate managers within four months from the date hereof.

Seventh. The Syndicate managers shall not be liable under any of the provisions of this agreement, or in or for any matter therewith connected, except for gross negligence or willful misconduct in performing or refraining from performing and carrying out the obligations by them herein expressly assumed as such Syndicate managers, the implication of any obligation not herein expressly assumed by them being hereby expressly denied and waived. The enumeration of particular powers conferred herein upon the Syndicate managers shall not be construed as limiting the general powers or discretion which are hereby intended to be conferred.

Eighth. This agreement shall bind and benefit (ratably according to the amount of their general subscriptions) not only the parties hereto, but their respective legal representatives, assigns, successors and survivors.

Ninth. This agreement may be extended for a further period of three months upon the written request to the Syndicate managers of a majority in interest of the signers hereof without any further or other action.

IN WITNESS WHEREOF, the parties hereto severally have hereunto affixed their signatures, it being understood for convenience that this agreement may be subscribed in several parts and copies with like force and effect as if all the subscriptions were to one part or copy hereof.

(Signature) [L. s.]

Witnesses:

.....

(Acknowledgments)

 Manufacturer With Distributor

FORM No. 547**Sales Agreement — Manufacturer with Distributer**

ARTICLES OF AGREEMENT entered into by and between (*THE GOULD COMPANY, organized under the laws of the State of Ohio,*) and doing business at (*Cleveland, Ohio,*) party of the first part, hereinafter called the seller, and (*JAMES REDMOND of Troy, New York,*) party of the second part, hereinafter called the purchaser, in the following terms:

THE SELLER PROMISES:

1st. To sell the following models of ("*GOULD AUTOMOBILES*") for cash in par funds, to the purchaser at the following prices, f. o. b. (*Cleveland, Ohio,*) namely:

.....

To allow (20)% discount from the above list prices.

Should the seller, in his discretion, desire to ship any (*automobile or automobiles*) from (*Troy, N. Y.,*) the sum of dollars additional to the net price to be paid for back freight and handling.

Equipment to be as per separate list prices.

2d. To allow the purchaser, in addition to the discount above named, a further discount based upon net amount paid in cash in par funds, by the purchaser to the seller, for (*models above enumerated, on or before June 30, 1917,*) and provided that all other provisions of this agreement have been complied with by the purchaser. They shall be as follows:

From (\$20,000 to \$35,000 — 3%)

From (35,000 to 50,000 — 4%)

From (50,000 to 5%)

3d. To establish no other dealer for the sale of Models enumerated in this agreement, in the City of (*Troy,*) County of (*Rensselaer,*) State of (*New York,*) during the continuance of this contract, and allow the purchaser, until further notice, to make sales in the following open territory (i. e., territory that is allotted to no dealer):

4th. To sell to the purchaser such (*parts of "GOULD" automobiles*) as said seller regularly manufactures, at a discount of% from list price thereof, f. o. b. (*Cleveland, Ohio,*) it

Manufacturer With Distributor

being expressly understood that this discount shall not apply to (*equipment such as tires, bodies, chassis, tops, etc., and such parts*) as are not manufactured by the seller, or are for sale regularly in the open market at a standard list price.

5th. To supply to the purchaser such quantity of catalogs and advertising matter as may be necessary in the opinion of the seller for the proper conduct of the business.

THE PURCHASER PROMISES:

1st. To order, accept and pay for (20 "*GOULD*") automobiles on the terms and conditions herein expressed, to be delivered before (*June 30th, 1917.*) Specifications for (*styles, colors, equipment and dates of deliveries*) to be made as hereinafter provided.

2d. To handle no new automobiles other than those manufactured by the seller

3d. Not to sell any (*model*) purchased of the seller under this contract, outside of, or to be sold outside of, the territory above specified, and to refer all inquiries for ("*GOULD*" automobiles) for other than the said territory to the seller.

4th. To keep in stock at least (*one 1917 "GOULD" automobile*) to be used for exhibition and demonstrating purposes, and to maintain it in good order and repair during the continuance of this agreement.

5th. To give in writing to the seller, at least once each month, the names and addresses of all purchasers of ("*GOULD*" automobiles,) together with (*their model and serial number.*)

6th. Not to advertise any (*new "GOULD" automobile*) for less than list price.

7th. If the purchaser violates the 2d, 3d, 4th or 6th paragraphs of this agreement, the seller, if he so elects, may immediately cancel this contract, or charge the purchaser as damages for each violation, the full list retail price of any automobile sold by purchaser to any person residing beyond the limits of purchaser's territory, as herein specified. Purchaser hereby authorizes seller to make such additional charge, and agrees to pay the full list-price for all machines so sold without the allowance for any discount as provided herein.

8th. To pay not later than the (*10th*) of the month following shipment of the goods, for all parts, supplies and other merchandise charged during the preceding month.

Manufacturer With Distributor

9th. To make no deduction in settlement for parts or other merchandise for which credit is obtained unless credit memorandum from the seller shall have been received, showing the amount allowed.

10th. To pay transportation charges on all advertising matter supplied without charge by the seller.

11th. To pay the seller the sum of \$(200) with the signing of this contract for each (*automobile*) ordered under this agreement, and to pay the balance thereon when notified by the seller that said (*automobile or automobiles*) are ready for shipment.

12th. That should the purchaser elect to have (*automobiles*) shipped to the purchaser to be paid for by sight draft attached to bill-of-lading or otherwise, and the seller comply with such desire, then and in that case responsibility of the seller shall cease when such (*automobile*) is delivered to the railroad company or any common carrier, and that the purchaser shall and does thereupon assume the liability for the safe-keeping and conduct of such (*automobile.*)

13th. That sales of ("*GOULD*" *automobiles,*) equipments and parts to the United States Government in, or to be used in, the above territory, are not subject to the terms of this agreement.

14th. The sales of (*Gould Commercial Motor Cars, equipments and parts*) in, or to be used in, the above territory, are not subject to the terms of this agreement. By the term ("*Gould Commercial Motor Cars*") is meant (*not only the regular commercial car chassis and bodies as furnished by The Gould Company, but also all chasses or cars of whatever model sold to be used for commercial purposes and not for private passenger use.*)

IT IS MUTUALLY AGREED:

1st. That full performance by the purchaser is a condition precedent to performance by the seller.

2d. That this contract and all orders hereunder are subject to strikes, accidents, fire, delay of transportation or other causes beyond the control of the seller, and that the seller shall not be liable to the dealer for any damage or loss the dealer may sustain by reason of the seller's failure to make delivery on date that may be agreed upon for shipment.

3d. The specifications for (*styles, colors, equipment*) and dates of deliveries on (*cars*) ordered under this contract shall be made

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to the seller by the purchaser upon demand of the seller. Refusal or neglect to make such specifications in writing, when demanded, shall constitute a waiver for any claims or damages or loss to the buyer, against the seller, for any failure to make deliveries.

4th. That all claims for alleged shortages must be made by the purchaser within (*ten*) days of receipt of the shipment on which shortage is claimed, and that after expiration of (*ten*) days no such claim will be made or allowed.

5th. That the seller shall have the right to reject any order or specification, or part thereof, for goods from the purchaser as it may deem fit.

6th. That all ("*GOULD*" cars) are subject to warranty published in the seller's catalog, and no other warranty or guarantee is given.

7th. That this agreement or any claim of the purchaser hereunder is not transferable.

8th. That should the purchaser dissolve this contract by giving notice or neglect or refuse to comply with any provision of this agreement all payments as deposits on (*cars*) heretofore made shall belong to the seller.

9th. That the failure of the seller to enforce at any time any provision of this agreement, or to exercise any option which is herein conceded, or to require at any time performance by the purchaser of any provision thereof, shall in no way affect the validity of this contract or any part thereof, or the right of the seller to thereafter enforce the same.

10th. That during the continuance of this contract if the seller shall, at any time, believe that the purchaser is not devoting sufficient time and energy to the sale of (*Gould*) cars to (*his*) fullest extent, the seller shall have the right and privilege of entering the said territory and making such sales as it may see fit, without terminating this contract or infringing any of the provisions hereof.

11th. That the stipulations of the agreement have been read and are understood by the purchaser, and that there are no agreements or understandings either oral, written or otherwise, which in any manner alter, abridge or conflict with the above, and this agreement may be altered, modified, or abridged only in writing duly signed by an officer or branch manager of the seller duly authorized.

Invention and Trade Secrets

12th. That the purchaser is not in any manner whatsoever authorized or empowered herein to conduct business under the name or for account of the seller, nor in its name nor upon its behalf to enter into contracts with or bill goods to third persons, nor in its name to make promises or representations relative to its goods, other than contained in the catalog hereinbefore referred to, and shall not use the term agent or agency in any manner in the conduct of his business.

13th. That this agreement shall take effect from and after its acceptance by the seller, which acceptance is evidenced by the signature of an officer or branch office manager acting within his authority hereunto; and the same is to continue in force until and including (*June 30, 1917,*) unless dissolved by either party giving notice; and in case of violation of this contract by the purchaser, the seller may cancel it without notice. This contract supersedes all contracts of prior date, except (*contract for trucks,*) if any, and any existing contracts for (*trucks,*) if any, are hereby terminated at the date of the signing of this contract.

IN WITNESS WHEREOF, both parties have signed and accepted this agreement on the (*2d*) day of (*October, 1916.*)

(*THE GOULD COMPANY,*)

By (*GERALD GOULD,*)

(*General Sales Manager.*)

Accepted (*October 2, 1916.*)

(*JAMES REDMOND.*)

FORM No. 548**Contract of Employment Covering Invention and Trade Secrets**

AGREEMENT between, a corporation organized and existing under and by virtue of the laws of the State of, having its principal place of business at the City of, in the County of, and State of, hereinafter referred to as "Employer"; and, hereinafter referred to as "Employee."

WHEREAS, said Employer is engaged in the manufacture and sale of; and

WHEREAS, said Employee desires to enter (or to continue in) the employment of said Employer;

Invention and Trade Secrets

NOW, THEREFORE, said Employer and said Employee, in consideration of their respective and mutual promises and agreements hereinafter set forth, promise and agree as follows:

Said Employee Promises and Agrees:

(1.) That he will devote his entire time and his best efforts during the period of his said employment to such duties as may be assigned him by said Employer and that he will faithfully and diligently serve and endeavor to further the interests of said Employer during the period of his said employment;

(2.) That any and all improvements or inventions within the scope of said Employer's business, which he may conceive or make during the period of his said employment, shall be the sole and exclusive property of said Employer, and that he will, whenever requested so to do by said Employer, execute and sign any and all applications, assignments, or other instruments which said Employer shall deem necessary in order to apply for and obtain Letters patent of the United States or of foreign countries for said improvements or inventions, and in order to assign and convey to said Employer the sole and exclusive right, title, and interest in and to said improvements, inventions, applications, or patents; and

(3.) That he will not disclose or use at any time, either during or subsequent to his said employment, any secret or confidential information or knowledge obtained or acquired by him by reason of his said employment, unless he shall establish in a court of law or of equity that such information or knowledge is in the public domain without his own wrong;

Said Employer Promises and Agrees:

(a) To employ said Employee (or continue his employment) at a wage or salary to be mutually agreed upon between the parties, for such length of time as shall be mutually agreeable to said Employer and to said Employee; and

(b) To pay said Employee as a bonus in addition to the consideration set forth above in paragraph (a) the sum of (\$.....) for each improvement or invention which said Employee shall conceive or make during the period of his employment, for which said Employer desires to apply for Letters Patent as above set forth, payable upon the signing and execution by said Employee of the papers set forth above in paragraph (2.)

Invention and Trade Secrets

Said Employer and said Employee Mutually Agree:

(1.) That the Employee's obligation to execute the papers set forth above in paragraph (2) shall continue beyond the termination of the period of employment with respect to any and all improvements or inventions conceived or made by him during the period of said employment, and such obligation shall be binding on the assigns, executors, administrators, and other legal representatives of said Employee;

(2.) That said bonus of (\$.....) set forth above in paragraph (b) shall apply only to those improvements or inventions for which said Employer desires to obtain Letters Patent;

(3.) That the expense of applying for and obtaining Letters Patent on said improvements or inventions shall be borne entirely by said Employer;

(4.) That this agreement shall be binding on and inure to the benefit of said Employer, its assigns and legal representatives.

IN WITNESS WHEREOF the parties hereto have signed this their agreement in duplicate this day of, 19...

.....
Employer.

.....
Employee.

In the presence of:

.....
.....

ASSIGNMENTS OF INSTRUMENTS

FORM No. 549

Assignment of Written Instrument (Short Form — Indorsed on Back)

For value received I hereby assign the within (*bond, contract, etc.*) to (*Oliver Hobbs.*)

Dated, (*New York, March 1, 1915.*)

(*RICHARD ROLLINS.*)

(Acknowledgment)

Where a simple transfer of the subject assigned is the intention of the parties, this form is sufficient.

In the event a guarantee is intended to be given, or it is necessary to give a power of attorney to enable the assignee to enforce his right, or if any other provision for the benefit of the assignee becomes requisite, then an appropriate special clause to that effect should be inserted.

When an assignment is taken of a thing in action (not a negotiable instrument,) the following rule should be observed:

1. Obtain a statement from the debtor in writing that he has no defense in law or equity.

2. On taking the assignment, the debtor should be notified thereof, demanding that all future payments be made to the assignee. Sometimes it is desirable to have the assignment recorded.

FORM No. 550

Assignment of Instrument with Power to Sue (Indorsed on Back)

In consideration of (*one dollar*) and other good and valuable consideration the receipt of which is hereby acknowledged, I hereby sell, assign, transfer and set over to (*Oliver Hobbs.*) his executors, administrators and assigns, all my right, title and interest in and to the within (*bond*) (*contract of insurance, account, etc.*); and I hereby give to the said (*Oliver Hobbs.*) his executors, administrators and assigns full power and authority for

Of Account

his or their own use and at his or their cost, to ask, demand, collect, receive, compound and give acquittance for the same or any part thereof, and in my name or otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor.

In witness whereof I have hereunto set my hand and seal this (10th) day of (*March*, 1915.)

(*RICHARD ROLLINS.*) [SEAL]

(Acknowledgment)

FORM No. 551

Assignment of Account

KNOW ALL MEN BY THESE PRESENTS, that I, (*Richard Rollins,*) of (*the Borough of Manhattan, City and County of New York,*) in consideration of (*one dollar*) lawful money of the United States, to me in hand paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and other good and valuable considerations, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto (*Oliver Hobbs*) of (*the City of Rochester, County of Monroe,*) State of New York, his executors, administrators and assigns, to his or their own proper use and benefit all moneys due upon the annexed account, or (*upon the sales and purchases of securities by me made upon and for the account of Henry Ross,*) therein mentioned.

And I do hereby give the said (*Oliver Hobbs,*) his executors, administrators and assigns, full power and authority, for his or their own use and benefit, but at his or their own cost, to ask, demand, collect, receive, compound and give acquittance for the same or any part thereof, and in my name or otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this (15th) day of (*March*, 1915.)

(*RICHARD ROLLINS.*) [SEAL]

In presence of

(*PETER STERLING.*)

(Acknowledgment)

Of Account as Collateral Security

FORM No. 552**Assignment of Account as Collateral Security for an Indorsement**

In consideration of (*one dollar,*) the receipt of which is hereby acknowledged, I, (*Richard Rollins,*) have sold, assigned, transferred and set over and by these presents do sell, assign, transfer and set over to (*Oliver Hobbs,*) his executors, administrators and assigns, any and all sums of money now due or to become due upon the annexed account upon and for the (*services rendered and materials furnished by me to Brown, Jones & Co.,*) therein mentioned. And I do hereby give the said (*Oliver Hobbs,*) his executors, administrators and assigns, full power and authority for his or their own use and benefit, but at his or their own cost, to ask, demand, collect, receive, compound and give acquittance for the same or any part thereof, and in my name or otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor.

This assignment, however, is made to secure the said (*Oliver Hobbs*) against any loss and damage which he may incur or sustain by reason of his indorsement of a promissory note made by (*Richard Rollins*) dated the (*20th*) day of (*March, 1915,*) for the sum of (\$7,000,) payable (*six months after date,*) and upon the condition that the payment of said note at maturity by the said (*Richard Rollins*) will render this assignment void, but otherwise this assignment to be of full force and virtue.

IN WITNESS WHEREOF I have hereunto set my hand and seal this (*25th*) day of (*March, 1915.*)

(*RICHARD ROLLINS.*) [SEAL]

Signed and sealed in the presence of
(*JAMES BRENNAN.*)

(Acknowledgment)

FORM No. 553**Assignment of Judgment**

KNOW ALL MEN BY THESE PRESENTS, that

WHEREAS, (*I, Ralph Burke,*) of (*the City of Syracuse, County of Onondaga,*) State of New York, did on the (*16th*) day of (*June, 1916,*) recover judgment in the (*Supreme Court of*

Judgment

the State of New York) against (*Thomas Martin and John Rogers*) for the sum of (*one thousand dollars,*) which judgment was duly entered and docketed in the office of the Clerk of the (*County of New York*) on the (*seventeenth*) day of (*March,*) in the year one thousand nine hundred and (*sixteen,*) now, (*I,*) the said (*Ralph Burke,*) in consideration of (*one dollar,*) to (*me*) duly paid, have sold, and by these presents do assign, transfer and set over unto (*William Rogers,*) of (*the City of Rochester,*) his executors, administrators and assigns, the said judgment and all sum or sums of money that may be had or obtained by means thereof, or on any proceedings to be had thereupon. And (*I*) do hereby constitute and appoint the said (*William Rogers,*) and his executors, administrators and assigns, my true and lawful attorneys, irrevocable, with power of substitution and revocation, for the use and at the proper costs and charges of the said (*William Rogers*) his executors, administrators and assigns, to ask, demand and receive, and to sue out executions, and take all lawful ways for the recovery of the money due or to become due on the said judgment, and on payment to acknowledge satisfaction, or discharge the same. And attorneys one or more under him or them for the purpose aforesaid, to make and substitute, and at pleasure to revoke; hereby ratifying and confirming all that said attorney or substitute shall lawfully do in the premises. And (*I*) do covenant, that there is now due on the said judgment the sum of (*one thousand dollars*) with interest from (*March 17th, 1916,*) and that (*I*) will not collect nor receive the same, or any part thereof, nor release nor discharge the said judgment, but will own and allow all lawful proceedings therein, the said (*William Rogers,*) his executors, administrators and assigns, saving me harmless of and from any costs in the premises.

IN WITNESS WHEREOF, (*I*) have hereunto set my hand and seal the day and year first above written.

(*RALPH BURKE.*) [SEAL]

Sealed and delivered in the presence of

(*GEORGE MORGAN.*)

(Acknowledgment)

See §§ 1260-1266, Code.

Lease—Individual or Corporation

FORM No. 554

Assignment of Lease—Individual or Corporation

KNOW ALL MEN BY THESE PRESENTS, that (We, *Charles Stewart and Richard Martin, as surviving executors of the will of Timothy Layton, deceased,*) parties of the first part, for and in consideration of (one) dollar, lawful money of the United States, paid by (*Caroline Layton, widow of Timothy Layton, of Upper Montclair, New Jersey,*) party of the second part, have sold and by these presents do grant, assign and transfer, unto the party of the second part, a certain indenture of lease, bearing date the (twenty-third) day of (March, eighteen hundred and ninety-six,) made by (*The Minister, Elders and Deacons of the Reformed Protestant Dutch Church of the City of New York to Humphry's Homeopathic Medical Company, and duly recorded in the office of the Register of the County of New York, on the thirteenth day of April, 1896, in Liber 23, Conveyances, Section 1, Page 1; which lease was assigned by said Humphry's Homeopathic Medical Company to said Timothy Layton, by assignment dated the nineteenth day of August, 1907, and duly*) recorded in the office of the (said Register) of the County of (New York,) on the (thirtieth) day of (August,) nineteen hundred and (seven) in Liber (114) of conveyances, of Section (1,) page (99) which said lease covers premises * * * (*Description,*) which said premises are included in (*Block Number (44) in Section (70) on the Land Map of the City of New York,*) together with all and singular the premises therein mentioned and described, and the buildings thereon, together with the appurtenances, (*and all rights and benefits under said lease,*)

TO HAVE AND TO HOLD the same unto the party of the second part, (*her*) (*executors administrators*) and assigns from the (first) day of (March,) nineteen hundred and (sixteen,) for and during all the rest, residue and remainder yet to come of and in the term of (*three years*) mentioned in the said indenture of lease, subject to the rents, covenants, conditions and provisions therein also mentioned, (*also subject to leases to present tenants.*)

(*This assignment of lease and transfer of building is made to said party of the second part as the sole residuary legatee under the will of said Timothy Layton, deceased.*)

Lease — Individual or Corporation

IN WITNESS WHEREOF, the parties of the first part (*have hereunto set their hands and seals this twentieth day of March, nineteen hundred and sixteen.*)

(CHARLES STEWART,) [L. s.]

(RICHARD MARTIN.) [L. s.]

(*as surviving executors of the will
of Timothy Layton, deceased.*)

In presence of

(HENRY LEE.)

(Acknowledgment)

Assignment of Mortgage

A written assignment of a mortgage and a written instrument extending the time for the payment of the mortgage and reducing the rate of interest payable thereon are both conveyances of real property within the meaning of the Real Property Law (Laws of 1896, Chap. 547, § 240) which defines the term "conveyance" as including "every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned, or by which the title to any real property may be affected."

An assignee of a past due mortgage for a valuable consideration is not bound by a written instrument executed by his assignor to the owner of the mortgaged premises prior to the execution of the assignment, which instrument extended the time for the payment of the mortgage and reduced the rate of the interest payable thereon, where such instrument was not brought to the assignee's knowledge or recorded until after the recording of the assignment.

See *Weideman v. Zielinska*, 102 App. Div. 163; also 128 App. Div. 888.

Assignment of Mortgage, Kings County — § 10 of Chap. 365 of the Laws of 1894, amended by Chap. 376 of the Laws of 1916, in effect May 1, 1916, provides that all assignments of mortgage or agreements with respect to mortgages to entitle the same to be recorded in Kings County must contain a specific description of the land affected by the mortgage unless said assignment or agreement recites the liber and page of the mortgage referred to.

FORM No. 555

Assignment of Mortgage. With Covenant — Individual or Corporation

KNOW ALL MEN BY THESE PRESENTS, that (*I, Norman Pailey, of the Borough of Manhattan, City of New York,*) party of the first part, for and in consideration of (*two thousand*) dollars, lawful money of the United States, paid by (*Herbert Diamond of the same place,*) party of the second part, do sell, assign and transfer unto the party of the second part, a

Of Mortgage — With Covenant

certain indenture of mortgage given to secure payment of the sum of (*two thousand*) dollars and interest, bearing date the (*5th*) day of (*July*), nineteen hundred and (*fifteen*), made by (*Martin Lanson of the Borough of Manhattan, City of New York, to William Oliver, and duly*) recorded in the office of the (*Register*) of the County of (*New York*), on the (*5th*) day of (*July*), nineteen hundred and (*fifteen*), in liber (264) of mortgages, of Section (7,) page (401,) which said mortgages covers premises * * * (*Description*), which said premises are included in (*Block Number (12,) in Section (7), on the Land Map of the City of New York*),

TOGETHER with the bond or obligation described in said mortgage, and the moneys due and to grow due thereon with the interest,

TO HAVE AND TO HOLD the same to the party of the second part, and to the successors, legal representatives and assigns of the party of the second part, forever, subject only to the proviso in said indenture of mortgage mentioned,

AND the party of the first part does hereby make, constitute and appoint the party of the second part the true and lawful attorney, irrevocable, of the party of the first part, in the name of the party of the first part, or otherwise, but at the proper costs and charges of the party of the second part, to have, use and take all lawful ways and means for the recovery of said money and interest, and in case of payment to discharge the same as fully as the party of the first part might or could do if these presents were not made,

AND the party of the first part does hereby covenant with the party of the second part, and with the successors, legal representatives and assigns of the party of the second part, that there is now owing upon (*the said bond and*) mortgage, without offset or defense of any kind, the principal sum of (*two thousand*) dollars, with interest thereon at (*four*) per centum per annum from the (*first*) day of (*January*), nineteen hundred and (*sixteen*.)

IN WITNESS WHEREOF, the party of the first part (*has set his hand and seal the 15th day of June, nineteen hundred and sixteen.*)

(*NORMAN PAILEY [L. S.]*)

In the presence of

(*JOHN MORTON.*) [acknowledgment.]

Of Mortgage — Without Covenant

FORM No. 556

Assignment of Mortgage. Without Covenant—Individual or Corporation

KNOW ALL MEN BY THESE PRESENTS, that (*I, Mary Hill, at present residing at Paris, in the Republic of France,*) party of the first part, for and in consideration of the sum of (*two thousand five hundred (\$2,500)*) dollars, lawful money of the United States, paid by (*Edward Hill,*) party of the second part, do sell, assign and transfer unto the party of the second part, a certain indenture of mortgage given to secure payment of the sum of (*two thousand five hundred (\$2,500)*) dollars and interest, bearing date the (*6th*) day of (*July,*) nineteen hundred and (*fifteen,*) made by (*William Reed, unmarried, of the Borough of Manhattan, in the City of New York, to me, the party hereto of the first part, to secure the payment of the principal sum of two thousand five hundred dollars and interest and duly*) recorded in the office of the (*Register*) of the County of (*New York,*) on the (*26th*) day of (*July,*) nineteen hundred and (*fifteen,*) in liber (102) of mortgages, of Section (4,) page (107,) which said mortgage covers premises, which said premises are included in (*Block Number (1240,) in Section (4,) on the Land Map of the City of New York,*)

TOGETHER with the bond or obligation described in said mortgage, and the moneys due and to grow due thereon with the interest,

TO HAVE AND TO HOLD the same to the party of the second part, and to the successors, legal representatives and assigns of the party of the second part, forever, subject only to the proviso in said indenture of mortgage mentioned,

AND the party of the first part does hereby make, constitute and appoint the party of the second part the true and lawful attorney, irrevocable, of the party of the first part, in the name of the party of the first part, or otherwise, but at the proper costs and charges of the party of the second part, to have, use and take all lawful ways and means for the recovery of said money and interest, and in case of payment to discharge the same as

Mechanic's Lien Against Real Property

fully as the party of the first part might or could do if these presents were not made.*

IN WITNESS WHEREOF, the party of the first part has set (her) hand and seal the (15th) day of (April,) nineteen hundred and (sixteen.)

(MARY HILL [L. S.])

In presence of

(AMOS SMITH.)

(Acknowledgment)

FORM No. 557**Assignment of Mechanic's Lien Against Real Property**

KNOW ALL MEN BY THESE PRESENTS, that (We, *Smith & Jones, a partnership having its principal place of business and principal office at 25 West street in the Borough of Manhattan, City of New York, consisting of John Smith, who resides at 45 West 67th street in the Borough of Manhattan, City of New York, and Frank Jones, who resides at 5 Union Hill, Hoboken, in the County of Hudson and State of New Jersey,*) for value received have sold and by these presents do assign, transfer and convey unto (*Buck & Frost, a partnership having its principal place of business and principal office at 32 Greene street in the Borough of Manhattan, City of New York, composed of James Buck, who resides at 132 East 81st street in the Borough of Manhattan, City of New York, and Arnold Frost, who resides at 132 East 81st street in the Borough of Manhattan, City of New York,* their) legal representatives or assigns, all (our) right, title and interest in and to a certain claim, demand and cause of action existing in favor of (*Smith & Jones against John Ramsden for the balance due to Smith & Jones from said John Ramsden upon a contract dated July 10, 1916, between Smith & Jones and said John Ramsden for the performance of certain work and the furnishing of certain material*) for the improvement of real property hereinafter described, together with all our right, title and interest in and to a certain mechanic's lien in the amount of (*five hundred*

*[This assignment being made without covenants or warranties expressed or implied and without recourse to (me), the party hereto of the first part, or to (my) heirs, executors or administrators in any case or event whatsoever.]

Savings Bank Deposit

and thirty) dollars (\$530,) based upon a notice filed by said (*Smith & Jones,*) in the office of the Clerk of the County of (*New York*) on the (*10th*) day of (*September, 1916,*) at (*11:20*) o'clock (*A.*) M., against the interest of (*Thomas West,*) as owner, and John Doe, as owner, in the following described premises:

[(Description.)]

And we and each of us do hereby constitute and appoint the said (*James Buck and Arnold Frost, their*) legal representatives and assigns, our true and lawful attorney, irrevocable with power of substitution and revocation, in (*our*) name, place and stead at (*their*) cost, to ask, demand, sue for, attach, recover and receive all money due or to become due upon such claim, demand, cause of action and mechanic's lien, and to bring all suits and take all lawful means for the enforcement of such claim and lien and to recover any sums that become due thereon and to enforce any judgment obtained in an action brought to enforce said lien and with full power and authority to satisfy and discharge the same.

(*SMITH & JONES.*)

(*By Frank Jones, a
member of the firm.*)

(Acknowledgment)

FORM No. 558**Assignment of Savings Bank Deposit**

In consideration of (*one (\$1) dollar,*) lawful money of the United States, and other valuable consideration to me in hand paid, the receipt whereof is hereby acknowledged, I (*C. Hazel Kirk,*) of (*100 West 90th street, Borough of Manhattan, City of New York,*) do hereby sell, assign, transfer and set over unto (*Margaret Wickham, her*) heirs, administrators, executors and assigns, all my right, title and interest in and to a certain savings bank deposit made by (*me*) with the (*Emigrant Industrial Savings Bank*) of the (*City of New York*) together with all my right, title and interest to Savings Bank Book No. (878416) of the said (*Emigrant Industrial Savings Bank*) and all sums of money, both principal and interest, now standing to my credit on the books of said bank; and in performance of this assignment and

Savings Bank Deposit

transfer I have this day delivered to (*Margaret Wickham*) the said Savings Bank Book and a signed draft on said account in blank, and I hereby authorize (*Margaret Wickham*) to complete said draft for the full amount of said deposit together with interest up to the time the said draft is presented for payment and to collect said deposit and take all steps that may be necessary for that purpose; and I further authorize and direct the (*Emigrant Industrial Savings Bank*) to pay over to the said assignee, (*Margaret Wickham*) or to (*her*) heirs, administrators, executors or assigns the full amount that may be due or may grow due upon said deposit.

Dated, (*New York, October 6th, 1916.*)

(*C. HAZEL KIRK.*)

(Acknowledgment)

Patents

Assignments must be recorded in Patent Office within three months. (Sec. 4898 U. S. R. S.) Acknowledgment under notarial seal prima facie evidence of execution (Sec. 4898 U. S. R. S.). Section 70 of the Bankruptcy Act (July 1, 1898) covers patents and patent rights, but as inventions and applications for patent are not specified therein, it is advisable to obtain assignment from bankrupt to Trustee, and from Trustee to purchaser.

FORM No. 559

Assignment Before Grant of Patent

WHEREAS, ..., a resident of the City of, in the County of, and State of, represents that he is the inventor of certain new and useful improvements in, ^a(for which he duly executed an application for letters patent of the United States on the day of, 19...;) and

WHEREAS, ..., a corporation organized and existing under and by virtue of the laws of the State of, and having its principal place of business at, in the County of, and State of, relying on the representations of said desires to acquire the entire right, title, and interest in and to said invention or inventions and in and to said application and in and to any letters patent which may be obtained therefor or thereon;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, Be It Known that for and in consideration of the sum of One Dollar (\$1.00) to him in hand paid, and of other good and valuable considerations, receipt of all of which hereby is acknowledged, the said has sold, assigned, and transferred, and by these presents does sell, assign, and transfer, unto the said, its successors and

^a After application filed, substitute for the bracketed clause the following: "for which he filed an application for letters patent of the United States on the day of, 19..., Serial No.;"

Patent — Before Granted

assigns, " the entire right, title, and interest in and to the said invention or inventions and in and to said application and in and to any letters patent which may be obtained therefor or thereon, and in and to any reissue or reissues or extension or extensions of any letters patent which may be granted for said invention or inventions^c; the same to be held and enjoyed by the said for its own use and behoof, and for the use and behoof of its successors and assigns, to the full end of the term for which said letters patent or any reissue or reissues or extension or extensions thereof may be granted, as fully and entirely as the same would have been held and enjoyed by the said had this assignment and sale not been made; and the said hereby represents and warrants that he has not granted and will not grant any rights or interests, and that he has not executed and will not execute any instrument, inconsistent with the rights granted herein; and that he hereby binds himself, and his heirs, executors, administrators, and legal representatives to execute any and all papers or instruments and to do any or all acts which may be necessary or required by the said in order to carry into full force and effect this sale, assignment, and transfer.

^a The said hereby does authorize and request the Commissioner of Patents to issue any letters patent which may be granted for said invention or inventions, to the

^b If assignment (grant) is only for specified territory, insert:
" for the territory comprised within and throughout the States of, but not elsewhere,"

^c If future similar inventions are to be included, insert:
" and in and to any rights or interests relating to inventions in which the said may acquire by invention or otherwise,"

^d If the assignment is subject to a separate agreement or if the consideration is not fully paid, the following paragraph or such part thereof as is appropriate, may be added:

This instrument and all rights granted thereunder is subject to a certain agreement in writing of even date herewith between the said and the said; and specifically is subject to the proviso that if said ceases business for six (6) months, or is adjudged a bankrupt, or fails to make the stipulated payments for four weeks after written notice of default therein, all rights granted herein shall revert to said as fully as though this sale, assignment, and transfer had not been made, the said by acceptance of this assignment, binding itself and its successors and assigns to execute any instruments and to do any and all acts necessary or required by the said to effectuate the same.

Patent — After Granted

said as the assignee of the entire right, title, and interest in and to the same.

IN TESTIMONY WHEREOF, the said hereunto has set his hand and affixed his seal this day of, 19

..... (L. S.)

STATE OF }
County of } ss.:

On this day of, 19, before me personally appeared, to me personally known, and known to me to be the person described in and who executed the foregoing instrument, and duly acknowledged to me that he executed the same as and for the purposes therein set forth.

[SEAL.]

.....

Notary Public.

FORM No. 560

Assignment After Grant of Patent

WHEREAS, ..., a resident of the City of, in the County of, and State of, represents that he is ^e(the inventor of certain new and useful improvements in and) the sole and exclusive owner of the entire right, title, and interest in and to certain Letters Patent of the United States, No. ..., granted to on the day of, 19 .., for; and

WHEREAS, ..., a corporation organized and existing under and by virtue of the laws of the State of, and having its principal office at the City of, in the County of, and State of, relying on the representations of said desires to acquire the entire right, title, and interest in and to the same:

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, Be It Known that for and in consideration of the sum of One Dollar (\$1.00) to him in hand paid, and of other good and

^e When the licensor is *not* the inventor, omit bracketed clause.

 Patent — After Granted

valuable considerations, receipt of all of which hereby is acknowledged, the said has sold, assigned, and transferred, and by these presents does sell, assign, and transfer unto the said, its successors and assigns, ^b the entire right, title, and interest in and to the said improvements in, and in and to any application for Letters Patent therefor, and in and to the said Letters Patent, and in and to any reissue or reissues or extension or extensions of said Letters Patent, or of any Letters Patent which may be granted for said improvements in, ^c together with the right to sue for and recover damages and profits in its own name for any and all past infringement of said Letters Patent; the same to be held and enjoyed by the said, for its own use and behoof, and for the use and behoof of its successors and assigns, to the full end of the term for which said Letters Patent or any reissue or reissues or extension or extensions thereof are or may be granted, as fully and entirely as the same would have been held and enjoyed by the said had this assignment and sale not been made; and the said hereby represents and warrants that he has not granted and will not grant any rights or interests, and that he has not executed and will not execute any instrument, inconsistent with the rights granted herein; and that he hereby binds himself, and his executors, administrators, heirs, and legal representatives to execute any and all papers or instruments and to do any or all acts which may be necessary or required by the said in order to carry into full force and effect this sale, assignment, and transfer.

"IN TESTIMONY WHEREOF, said hereunto has set his hand and affixed his seal this day of, 19 . . .

. (L. S.)

(Acknowledgment, See Form No. 559.)

See b, c, and d in Form No. 559 (supra).

License

[A license which purports to convey *everything* granted by the patent, as an exclusive license to manufacture, use, and sell throughout the United States, is construed by the courts as an assignment and conveys both legal and equitable title. Some rights should remain in the licensor, therefore, in order to prevent a complete transfer.]

FORM No. 561

License

WHEREAS, ..., a resident of the City of, in the County of, and State of, represents that he is^f (the inventor of certain new and useful improvements in and) the sole and exclusive owner of the entire right, title, and interest in and to certain Letters Patent of the United States, No., granted to, on the day of, 19.., for; ^gand

WHEREAS, ..., a corporation organized and existing under and by virtue of the laws of the State of, and having its principal office at the City of, in the County of and State of, relying on the representations of said desires to acquire an exclusive (or non-exclusive) license to manufacture and sell (or use) the same;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN, Be It Known that for and in consideration of the sum of one dollar (\$1.00) to him in hand paid, and of other good and valuable considerations, receipt of all of which hereby is acknowledged, the said hereby grants unto the said, the exclusive (or non-exclusive) license and privilege and empowers the said, its successors and assigns, to manufacture and sell (or use) throughout the United States and the territories thereof, subject to the conditions hereinafter named, the invention described and claimed in said Letters Patent of the United States, No., granted to, on the day of, 19.., for
(Insert conditions of the license).

^f When licensor *not* the inventor, omit bracketed clause.

^g When licensor has granted other licenses or interests, insert: except a license granted to, etc.

License

The said, by its acceptance of this license, binds itself and its successors and assigns to abide by and perform the conditions hereinabove set forth.

IN TESTIMONY WHEREOF, said hereunto has set his hand and affixed his seal on the day of, 19...

..... (L. S.)

In the presence of

.....

.....

(Acknowledgment)

Transfer of Goods in Bulk

1. "The sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferor or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, shall be void as against the creditors of the seller, transferor or assignor unless the seller, transferor or assignor and the purchaser, transferee or assignee shall at least five days before the sale make a full and detailed inventory, showing the quantity and, so far as possible with the exercise of reasonable diligence, the cost price to the seller, transferor or assignor of each article to be included in the sale; and unless the purchaser, transferee or assignee demand and receive from the seller, transferor or assignor a written list of names and addresses of the creditors of the seller, transferor or assignor with the amount of the indebtedness due or owing to each and certified by the seller, transferor or assignor under oath to be a full, accurate and complete list of his creditors and of his indebtedness; and unless the purchaser, transferee or assignee shall at least five days before taking possession of such merchandise, or merchandise and fixtures, or paying therefor, notify personally or by registered mail every creditor whose name and address are stated in said list, or of which he has knowledge, of the proposed sale and of the price, terms and conditions thereof.

2. Sellers, transferors and assignors, purchasers, transferees and assignees under this section shall include corporations, associations, co-partnerships and individuals. But nothing contained in this section shall apply to general assignments for the benefit of creditors or to sales by executors, administrators, receivers, trustees in bankruptcy, assignees under a voluntary assignment for the benefit of creditors or any public officer under judicial process.

3. Any purchaser, transferee or assignee who shall not conform to the provisions of this section shall upon application of any of the creditors of the seller, transferor or assignor become a receiver and be held accountable to such creditors for all the goods, wares, merchandise and fixtures that have come into his possession by virtue of such sale, transfer or assignment: Provided, however, that any purchaser, transferee, or assignee, who shall conform to

Stock and Good Will

the provisions of this act shall not be held in any way accountable under this section to any creditor of the seller, transferrer or assignor or to the seller, transferrer or assignor for any of the goods, wares, merchandise or fixtures that have come into the possession of such purchaser, transferee or assignee by virtue of such sale, transfer or assignment." § 44 of the Personal Property Law, as amended by Chap. 507 of the Laws of 1914.

Whether this act is Constitutional or not is still a grave and open question now pending in the courts. See *Apex Leasing Co. v. Litke*, 93 Misc. 353; *Klein v. Maravelas*, 94 Misc. 458, and cases cited.

FORM No. 562**Bill of Sale — Stock in Trade and Good Will**

KNOW ALL MEN BY THESE PRESENTS, that (*I, Peter Smith,*) of (*the Borough of Manhattan, City, County and State of New York,*) party of the first part, for and in consideration of the sum of (*one dollar in lawful money of the United States and other valuable consideration,*) to (*me*) in hand paid, at or before the ensealing and delivery of these presents, by (*Edward Jones and James Brown,*) parties of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey unto the said parties of the second part, their executors, administrators and assigns, (*the business now conducted by me at No. 277 Broadway, Borough of Manhattan, City of New York, including the good-will thereof, lease, stock in trade, machines, fixtures and appurtenances, books, outstanding accounts and each and everything used by me therein. And I hereby authorize the parties of the second part or either of them to collect the said outstanding accounts, and in my name to give receipts therefor, and to indorse any checks made to me in payment thereof.*) To have and to hold the same unto the said parties of the second part, their executors, administrators and assigns forever. And (*I*) do, for (*myself, my*) heirs, executors and administrators, covenant and agree to and with the said parties of the second part, to warrant and defend the sale of the said (*business, good-will, etc.,*) hereby sold unto the said parties

Stock and Good Will

of the second part, their executors, administrators and assigns, against all and every person and persons whomsoever.

IN WITNESS WHEREOF, (*I*) have hereunto set (*my*) hand and seal this (*twenty-fifth*) day of (*February,*) one thousand nine hundred and (*fifteen.*)

(*PETER SMITH,*) (L. S.)

Sealed and delivered in the presence of

(*PETER STERLING.*)

(Add Schedule and Acknowledgment)

BONDS

FORM No. 563

Bond

KNOW ALL MEN BY THESE PRESENTS, that (*Edwin Rose, unmarried, of the Borough of Manhattan, City of New York,*) hereinafter designated as the obligor, does hereby acknowledge himself to be indebted to (*Mary Kimball of the Borough of Brooklyn, City of New York,*) hereinafter designated as the obligee, in the sum of (*two thousand five hundred (\$2,500) dollars,*) lawful money of the United States, which sum (\$2,500) said obligor does hereby covenant to pay to said obligee, (*Mary Kimball, her*) executors, administrators or assigns, on the (*second*) day of (*January,*) nineteen hundred and (*twenty,*) with interest thereon, to be computed from the (*second*) day of (*January, 1915,*) at the rate of (*five*) (5) per centum per annum, and to be paid on the (*second*) day of (*July*) next ensuing the date hereof, and semi-annually thereafter.

AND IT IS HEREBY EXPRESSLY AGREED THAT the whole of the said principal sum shall become due at the option of said obligee after default in the payment of interest for thirty days, or after default in the payment of any tax or assessment for thirty days after notice and demand. All of the covenants and agreements made by the said obligor in the mortgage covering premises therein described and collateral hereto, are hereby made part of this instrument.

Signed and sealed this (*second*) day of (*January, 1915.*)

(*EDWIN ROSE.*) (L. S.)

In the presence of

(*FRANK R. DENTON.*)

(Acknowledgment)

FORM No. 564

Bond — Installment Form *

KNOW ALL MEN BY THESE PRESENTS, that (*Edward Rose, unmarried, of the Borough of Manhattan, City of New York,*) hereinafter designated as the obligor does hereby acknowl-

* For mortgage to accompany this bond see Form No. 612, p. 1251.

Building Loan

edge (*himself*) to be indebted to (*Mary Kimball, of the Borough of Brooklyn, City of New York,*) hereinafter designated as the obligee, in the sum of (*two thousand four hundred (\$2,400)*) dollars, lawful money of the United States, which sum (\$2,400) said obligor does hereby covenant to pay to said obligee (*Mary Kimball, her executors, administrators*) or assigns, in installments, as follows: (*Eight hundred*) dollars on the (*first*) day of (*October, 1917;*) (*eight hundred*) dollars on the (*first*) day of (*October, 1918;*) (*eight hundred*) dollars on the (*first*) day of (*October, 1919,*) with interest thereon, to be computed from the (*first*) day of (*October, 1916,*) at the rate of (*five*) per centum per annum, and to be paid on the (*first*) day of (*April*) next ensuing the date hereof, and semi-annually thereafter.

AND IT IS HEREBY EXPRESSLY AGREED THAT the whole of said principal sum shall become due at the option of said obligee after default in the payment of any installment of principal, or after default in the payment of interest for thirty days, or after default in the payment of any tax or assessment for thirty days after notice and demand. All of the covenants and agreements made by the said obligor in the mortgage covering premises therein described and collateral hereto are hereby made part of this instrument.

Signed and sealed this (*first*) day of (*October, 1916.*)

(*EDWARD ROSE.*) (SEAL)

In the presence of

(*MARY DIX.*)

(Acknowledgment)

FORM No. 565

Building Loan Bond *

KNOW ALL MEN BY THESE PRESENTS, that (*Edward Rose of the Borough of Manhattan, City of New York,*) hereinafter designated as the obligor, does hereby acknowledge (*himself*) to be indebted to (*Mary Kimball of the Borough of Brooklyn, City of New York,*) hereinafter designated as the obligee, in the sum of (*six thousand*) dollars, lawful money of the United States, or so much thereof as shall be advanced, which sum said obligor

* For mortgage to accompany this bond see Form No. 612, p. 1251.

Building Loan

(*does*) hereby for (*himself*) and legal representatives, covenant to pay to said obligee, (*his*) legal representatives or assigns, on the (*first*) day of (*October*,) nineteen hundred and (*nineteen*,) with interest thereon to be computed from the date of each advance, at the rate of (*five*) per centum per annum, and to be paid on the (*first*) day of (*April*) next ensuing the date hereof, and semi-annually thereafter.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that the whole of said principal sum, or so much thereof as shall have been advanced and the interest thereon, shall, at the option of the holder of this bond, become immediately due and payable, without notice or demand, upon the failure of the obligor to perform or to comply with any or all of the covenants, terms and provisions by said obligor to be performed, contained either in the mortgage accompanying this bond, or in the building loan agreement entered into between the obligor and (*Mary Kimball*,) dated the (*first*) day of (*October*, 1916.)

AND IT IS HEREBY EXPRESSLY AGREED that the whole of said principal sum shall become due at the option of said obligee after default in the payment of interest for thirty days, or after default in the payment of any tax or assessment for thirty days after notice and demand. All of the covenants and agreements made by the said obligor in the mortgage covering premises therein described and collateral hereto, are hereby made part of this instrument.

IN WITNESS WHEREOF, the said obligor has signed and sealed these presents this (*first*) day of (*October*, 1916.)

(*EDWARD ROSE*.) (SEAL)

In the presence of

(*MARY DIX*.)

(Acknowledgment)

With Surety for Payment of Judgment

FORM No. 566**Bond With Surety for Payment of Judgment**

KNOW ALL MEN BY THESE PRESENTS, That we, (PAUL RYDER,) doing business at (*No. 161 Broadway, New York City,*) and (MARY E. RYDER,) of (*Brewster, New York,*) as Principals and the (NEW YORK INDEMNITY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of New York, and having an office for the transaction of its business at *No. 32 William Street, Borough of Manhattan, New York City,*) as Surety, are held and firmly bound unto (THE NATIONAL BANK OF THE CITY OF NEW YORK,) its successors and assigns, in the sum of (*thirty-eight thousand (\$38,000)*) dollars, lawful money of the United States of America, to the payment of which, well and truly to be made, the said (PAUL RYDER and MARY E. RYDER) bind themselves and (*their*) heirs, administrators and assigns, and (*the NEW YORK INDEMNITY COMPANY*) binds (*itself, its successors and assigns,*) jointly and severally, firmly by these presents.

IN WITNESS WHEREOF, the said (PAUL RYDER and MARY E. RYDER) have hereunto set their hands and seals, and (*the NEW YORK INDEMNITY COMPANY*) has caused these presents to be executed by its duly authorized officers, this (22d) day of (*December, 1913.*)

WHEREAS, on or about the (22d) day of (*December, 1913,*) said (PAUL RYDER and MARY E. RYDER) entered into an agreement in writing with said (THE NATIONAL BANK OF THE CITY OF NEW YORK,) wherein and whereby, in consideration of the covenants therein made by (THE NATIONAL BANK OF THE CITY OF NEW YORK,) said (PAUL RYDER and MARY E. RYDER) agreed, as additional security for the payment of a certain indebtedness owing by them to said (BANK,) evidenced by a judgment against said (PAUL RYDER) and another judgment against said (MARY E. RYDER,) each recovered by said (BANK) on (*October 24, 1913,*) and otherwise, the total amount of said indebtedness, being (*thirty-five thousand nine hundred forty-three and 57/100 dollars (\$35,943.57,*) that they, said (PAUL RYDER and MARY E. RYDER,) would pay said indebtedness on or before (*July 31, 1914,*) with accrued interest from (*October 24, 1913,*) and would provide a surety company bond in the amount of (*thirty-eight thousand dollars (\$38,000)*) to secure the pay-

With Surety for Payment of Judgment

ment of said indebtedness on or before (*July 31, 1914,*) without demand or further proceedings by said (*BANK,*) at law or in equity against said (*PAUL RYDER or MARY E. RYDER,*) or either of them, for the collection of said indebtedness; and

WHEREAS, in said agreement between said (*THE NATIONAL BANK OF THE CITY OF NEW YORK*) and said (*PAUL RYDER and MARY E. RYDER,*) dated (*December 22d, 1913,*) as aforesaid, wherein, in consideration of the promises therein made by said (*PAUL RYDER and MARY E. RYDER,*) said (*BANK*) made three separate covenants, as follows: (1) that said (*BANK*) will sign a stipulation when presented by said (*PAUL RYDER or MARY E. RYDER,*) or their attorney, discontinuing the proceedings of said (*BANK*) against the (*City of New York*) in aid of execution against the property of said (*PAUL RYDER;*) (2) that said (*BANK*) will sign a stipulation when presented by said (*PAUL RYDER or MARY E. RYDER,*) or their attorney, discontinuing the proceedings supplementary to execution against said (*PAUL RYDER and against said MARY E. RYDER;*) (3) that said (*BANK*) would not institute any proceeding or proceedings for the collection of the indebtedness of said (*PAUL RYDER and MARY E. RYDER*) to it, prior to (*July 31, 1914;*)

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if said (*PAUL RYDER and MARY E. RYDER,*) or either of them, shall, on or before (*July 31, 1914,*) pay or cause to be paid the said indebtedness owing by them to said (*THE NATIONAL BANK OF THE CITY OF NEW YORK,*) then this obligation to be null and void; otherwise to remain in full force and effect; Provided, however, that said (*THE NATIONAL BANK OF THE CITY OF NEW YORK*) shall have fully performed the terms of its three separate covenants with said (*PAUL RYDER and MARY E. RYDER,*) as set forth in the above paragraph next preceding.

(*PAUL RYDER,*)

(*MARY E. RYDER,*)

(*NEW YORK INDEMNITY COMPANY,*)

By (*FRANK C. WEBB,*)

(*Resident Vice-President.*)

Attest:

(*ROBERT GOAN,*)

(*Resident Assistant Secretary.*)

(Acknowledgment)

Of Indemnity Against Mechanics' Liens

FORM No. 567

Bond of Indemnity Against Mechanics' Liens

KNOW ALL MEN BY THESE PRESENTS, That (*we, NATIONAL PROVISION COMPANY, SIMON SELBY, LOUIS STARR and SAMUEL FISHER, of 2356 Third Avenue, New York City, New York,*) as Principals, and the (*UNITED GUARANTY COMPANY,*) having an office and usual place of business at (*No. 19 Cedar Street, Borough of Manhattan, City, County and State of New York,*) as Surety, are held and firmly bound unto (*MORRIS BROWER*) in the sum of (*two thousand (\$2,000)*) dollars, lawful money of the United States of America, to be paid to the said (*MORRIS BROWER;*) to which payment well and truly to be made we bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated this (*9th*) day of (*February, 1916.*)

WHEREAS, (*National Provision Company, Simon Selby, Louis Starr and Samuel Fisher, have leased the premises known as Nos. 66, 68 and 70 East 123d Street, and 63 East 122d Street, City of New York, from the said Morris Brower, and desire to make certain alterations in and about the same;*) and

WHEREAS, the said (*Morris Brower is willing to permit the said alterations to be made*) upon receiving a bond indemnifying him against any loss or damage which he may suffer by reason of liens being filed against the said property for labor or material furnished in (*the making of said alterations.*)

NOW, THEREFORE, the condition of this obligation is such that if the (*National Provision Company, Simon Selby, Louis Starr and Samuel Fisher,*) shall indemnify and hold harmless the said (*Morris Brower*) from and against any and all mechanics' liens which may be filed on or against the said premises for labor or material in connection with (*the said alterations,*) within the period of (*six*) months from the date of this bond, then this obligation to be void, else to remain in full force and virtue.

IT IS EXPRESSLY UNDERSTOOD AND AGREED, that notice of any liens filed against this property will be given to the surety in writing within (*seven*) months from the date of this obligation, and that unless said notice is furnished by the said (*Morris Brower,*) this obligation shall become null and void.

For Performance of a Contract

IT IS FURTHER EXPRESSLY UNDERSTOOD AND AGREED that the surety shall have the right to come in and defend any and all such liens filed against the said premises in the name of said (*Morris Brower*,) but at the proper cost and expense of the (*surety*.)

(*NATIONAL PROVISION COMPANY*,)

By (*Simon Selby*,)

(*President*.)

(*UNITED GUARANTY COMPANY*,)

By (*Frank Hodge*,)

(*Attorney-in-fact*.)

Attest:

(*HARRY ASHER*,)

(*Attorney-in-fact*.)

(Acknowledgment)

FORM No. 568

**Bond with Surety for Performance of Contract—Providing for
Notice of Claim to Surety and Short Period of Limitation**

KNOW ALL MEN BY THESE PRESENTS, That we, (*THOMAS R. SIMPSON*, of *Freeport, New York*,) as Principal, and the (*MUTUAL INDEMNITY COMPANY*,) a corporation organized and existing under the laws of the State of New York, having an office and place of business at (*No. 31 Liberty Street, Borough of Manhattan, City of New York*,) as Surety, are held and firmly bound unto (*SUPERIOR MACHINE COMPANY*,) a corporation organized and existing under the laws of the State of (*Delaware*,) as obligee, in the sum of (*twenty-five thousand dollars* (\$25,000.00,)) lawful money of the United States of America, to the payment of which, well and truly to be made, the said Principal binds himself, and his heirs, executors, administrators, successors and assigns, and the said Surety binds itself, and its successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this (*26th*) day of (*August*, 1916.)

WHEREAS, the above-named Principal entered into a certain agreement in writing bearing date the (*11th*) day of (*August*,

For Performance of a Contract

1916,) with the above-named Obligee, whereby the said Principal agrees (*to act as the Sales Agent of the Obligee and to sell or secure orders for automobiles*) in accordance with the terms and conditions set forth in said agreement.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above-named Principal shall well and truly keep and perform all of the terms and conditions of said agreement of (*August 11th, 1915,*) on his part to be kept and performed, then this obligation to be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed by the Surety upon the following express conditions; which shall be conditions precedent to the right of the Obligee to recover hereunder.

The Obligee shall keep, do and perform each and every, all and singular, the matter and things set forth and specified in said contract, to be by the Obligee kept, done and performed exclusively at the times and in the manner as in said contract specified;

The said Surety shall be notified in writing of any act or omission on the part of said Principal which may involve a loss for which the said Surety is responsible hereunder, immediately after such omission or the occurrence of such act shall have come to the knowledge of said Obligee, or to any representative duly authorized to oversee the performance of said contract; and a registered letter mailed to the Surety, at its principal office in New York City, State of New York, shall be the notice required within the meaning of this bond; and that any suits at law or proceedings in equity brought to recover any claim based upon or arising out of any such act or omission on the part of the Principal, or of any claim hereunder, shall be commenced within one year after the giving of such notice, and within twelve months after the termination of said contract between the Obligee and the Principal by completion thereof, by expiration or by agreement between the said Principal and the Obligee.

(THOMAS R. SIMPSON,) [L. S.]

(MUTUAL INDEMNITY COMPANY,)

By (*Harry Walton,*)

(*Resident Vice-President.*)

Attest:

(ROBERT MELVILLE,)

(*Resident Asst. Secretary.*)

CHATTEL MORTGAGE

FORM No. 569

Chattel Mortgage

KNOW ALL MEN BY THESE PRESENTS, that I, (*Peter Smith,*) now residing at (*2580 Broadway, in the borough of Manhattan, City, County*) and State of New York, of the first part, for securing the payment of the indebtedness hereinafter mentioned and in consideration of the sum of one dollar to (*me*) duly paid by (*Edward Jones and James Brown, both of the Borough of Brooklyn, in the said City of New York,*) of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said part(*ies*) of the second part, (*all and singular the stock in trade, goods, materials and merchandise, fixtures, machines and appurtenances, books, book-accounts, notes, drafts and other evidences of debt,*) and all other goods and chattels mentioned in the schedule hereunto annexed, and now in the (*premises No. 16 Broad St., in the Borough of Manhattan, City of New York.*)

TO HAVE AND TO HOLD, all and singular the goods and chattels above bargained, sold and conveyed, or intended so to be, unto the said part(*ies*) of the second part, (*their*) executors, administrators and assigns forever. And the said part(*y*) of the first part, for (*his*) heirs, executors and administrators, all and singular of the said goods and chattels above bargained, sold and conveyed, unto the said part(*ies*) of the second part, (*their*) executors, administrators and assigns, against (*me,*) the said part(*y*) of the first part, and against all and every person or persons whomsoever, shall and will warrant, and forever defend.

UPON CONDITION, that if (*I,*) the said part(*y*) of the first part, shall and do well and truly pay unto the said part(*ies*) of the second part, (*their*) executors, administrators or assigns, the sum of (*five hundred dollars, lawful money of the United States, within six months from the date hereof, with interest on said sum from the date hereof to the day of payment at six per centum per annum, in accordance with the terms of a promissory note for that amount, bearing even date herewith made and deliv-*

Usual Form

ered by me payable to order of the parties of the second part six months after date with interest at six per cent.,) then these presents shall be void, otherwise to remain in full force. And (I,) the said part(y) of the first part, for (myself) and (my) executors, administrators and assigns, do covenant and agree, to and with the said part(ies) of the second part, and (their) executors, administrators and assigns, that in case default shall be made in the payment of the said sum above-mentioned at the time and in the manner above stated, then it shall and may be lawful for, and (I,) the said part(y) of the first part do hereby authorize and empower the said part(ies) of the second part, (their) executors, administrators and assigns, with the aid and assistance of any person or persons, to entering dwelling-house, store and other premises, and such other place or places as the said goods or chattels are or may be placed, and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price (they) can obtain, and out of the money arising therefrom, to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto (me) or to (my) executors, administrators or assigns. And until default shall be made in the payment of the said sum of money as aforesaid (I) am to remain and continue in the quiet and peaceable possession of the said goods and chattels and the full and free enjoyment of the same. If the proceeds of said property shall not be sufficient to pay and discharge said debt with interest, costs and charges, (I) said (Peter Smith,) part(y) of the first part, hereby agree to pay the deficiency with interest.

IN WITNESS WHEREOF, (I,) the said part(y) of the first part, have hereunto set (my) hand and seal the (tenth) day of (March,) one thousand nine hundred and (sixteen.)

(PETER SMITH.) (SEAL.)

Sealed and delivered in the presence of
(HARRY HILL.)

(Acknowledgment)

Filing of Chattel Mortgage

Every Chattel Mortgage which is not accompanied by a change of possession is void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage or a true copy thereof is filed as directed in the Lien Law.

Excepting, however, Factors' Liens on Merchandise, complying with Sec. 45 of the Personal Property Law, and loans on stocks or bonds as provided in the amendment of 1910. (Sec. 230 Lien Law, as amended by Chap. 348, Laws of 1916).

Failure to file does not affect the validity of the mortgage between the parties. Unless filed it is invalid as to creditors and subsequent purchasers and mortgagees in good faith, but not as to purchasers with notice. *Gand v. Collins*, 214 N. Y. 298.

As to filing, Sec. 232 Lien Law provides:

"An instrument, or a true copy thereof, if intended to operate as a mortgage of a canal boat, steam tug, scow or other craft, or of the appurtenances thereto, navigating the canals of this state, must be filed in the office of the superintendent of public works, and need not be filed elsewhere. Every other chattel mortgage, or an instrument intended to operate as such, or a true copy thereof, must be filed in the town or city where the mortgagor, if a resident of the state, resides at the time of the execution thereof, and if not a resident, in the city or town where the property mortgaged is at the time of the execution of the mortgage. If there is more than one mortgagor, the mortgage, or a certified copy thereof, must be filed in each city or town within the state where each mortgagor resides at the time of the execution thereof. In the city of New York, such instrument must be filed as follows, namely: in the borough of Brooklyn in said city, such instrument shall be filed in the office of the register of the county of Kings; in the borough of Queens in said city, in the office of the clerk of Queens county; in the borough of Richmond in said city, in the office of the clerk of the county of Richmond; in the borough of Manhattan in said city, in the office of the register of the county of New York, and in the borough of the Bronx, in said city, in the office of the register of the county of Bronx. In every other city or town of the state, in the office of the city or town clerk, unless there is a county clerk's office in such city or town, in which case it must be filed therein. If the chattels mortgaged are in the city

Statement for Renewal

of New York at the time of the execution of the mortgage, the mortgage or a true copy thereof must be filed in the county where the mortgagor alleges to reside at the time of the execution of the mortgage, and in the county where the property is situated. All liens and mortgages, including books and records pertaining thereto, now on file in the comptroller's office, shall be transferred to the office of the superintendent of public works, who shall preserve the same in his department, and who shall be vested with full power and authority to do and perform any and all things relating thereto in like manner and with the same force and effect as heretofore done and performed by the comptroller."

FORM No. 570

Statement for Renewal by Mortgagee on Refiling of Chattel Mortgage

STATE OF NEW YORK, }
City and County of. (*New York*,) } ss.:

(*The Childs Coal Company, a domestic corporation, having its office at No. 16 Wall street in the Borough of Manhattan, City, County and State of New York,*) does hereby certify and state that it is the owner and holder of a certain mortgage of personal property dated (*the second*) day of (*February, 1914,*) made by (*James Bell*) of (*the Borough of Manhattan, New York City,*) to (*the Childs Coal Company,*) aforesaid, to secure the payment of (*seven hundred dollars*), filed on the (*fifth*) day of (*February, 1914,*) in the office of the (*Register*) of the County of (*New York;*) and that the interest of the mortgagee claimed by virtue of said mortgage is that it holds the same as security for the payment of (*five hundred*) dollars, with interest thereon from the (*second*) day of (*February, 1914.*)

Annexed hereto is a true copy of the aforesaid mortgage.
Dated, (*New York, February 2, 1915.*)

(*CHILDS COAL COMPANY,*)

(SEAL)

By *Frank Childs,*
(*Secretary and Treasurer.*)

(Acknowledgment)

Renewal of Chattel Mortgage

A chattel mortgage, except as otherwise provided in this article, shall be invalid as against creditors of the mortgagor, and against subsequent purchasers or mortgagees in good faith, after the expiration of the first or any succeeding term of one year, reckoning from the time of the first filing unless,

1. Within thirty days next preceding the expiration of each such term, a statement containing a description of such mortgage, the names of the parties, the time when and place where filed, the interest of the mortgagee or any person who has succeeded to his interest in the property claimed by virtue thereof, or

2. A copy of such mortgage and its endorsements, together with a statement attached thereto or endorsed thereon, showing the interest of the mortgagee or of any person who has succeeded to his interest in the mortgage, is filed in the proper office in the city or town where the mortgagor then resided, if he is then a resident of the town or city where a mortgage or a copy thereof or such statement was last filed; if not such resident, but a resident of the State, a true copy of such mortgage, together with such statement, shall be filed in the proper office of the town or city where he then resides; and if not a resident of the State, then in the proper office of the city or town where the property so mortgaged was at the time of the execution of the mortgage. Where the chattels mortgaged were located in the city of New York at the time of the execution of the mortgage, a copy of such mortgage and its endorsements together with a statement attached thereto, or endorsed thereon, showing the interest of the mortgagee or of any person who has succeeded to his interest in the mortgage, must be filed in the same office or offices where the original mortgage or a copy thereof was filed at the time of the execution of the same; provided, however, that where the mortgagor was a resident of the Borough of the Bronx in the City of New York at the time of the execution of such mortgage, then a copy of such mortgage as above described must be filed in the office of the register of the county of Bronx and also in the office of the register or of the county clerk, in case there is no register, of such county in said city in which the property so mortgaged was located at the time of the execution of such mortgage; if not such resident but the property so mortgaged was located in the borough of the

Statement to be Endorsed on, for Renewal

Bronx in said city at the time of the execution of such mortgage, then a copy of such mortgage as above described must be filed in the office of the register of the county of Bronx and also in the office of the register or of the county clerk, in case there is no register, of such county in said city in which the mortgagor resided when such mortgage was executed; provided, further, that where the mortgagor was a resident of the borough of the Bronx, in the city of New York, at the time of the execution of such mortgage and the property so mortgaged was located in the borough of the Bronx at such time, then a copy of such mortgage as above described must be filed in the office of the register of the county of the Bronx and need not be filed in any other office, and provided, further, that where the vendee of a contract for the conditional sale of goods and chattels not attached to a building was a resident of the borough of the Bronx in said city of New York at the time of the execution of such contract, then a copy of such contract, together with a statement as required herein in the case of chattel mortgages, must be filed in the office of the register of the county of Bronx; if not such resident nor a resident of any other borough within the city of New York nor of this State at the time of the execution of such contract but the property so sold was in the borough of the Bronx in said city when such contract was executed, then a copy of such contract and a statement as aforesaid must be filed in the office of the register of the county of Bronx. Except in the city of New York the officer with whom such a renewal statement, or copy of a mortgage, is filed shall upon request issue to the person filing the same a receipt in writing, which shall contain the names of the parties to the instrument filed, its date, amount and the date and time of filing thereof.

Lien Law, § 235, as amended by Laws 1916, Ch. 608.

FORM No. 571

**Statement to be Endorsed Upon or Attached to a Copy of Chattel
Mortgage for Renewal**

(*THE DOMESTIC BREWING COMPANY*,) the within named mortgagee, does hereby state that there now remains due and unpaid to it upon the foregoing mortgage, the sum of

Statement for Renewal — Personal Property

(*eighteen hundred (\$1,800) dollars,*) and interest from (*January 4, 1915,*) which amount is the interest of the said mortgagee in said mortgage, claimed by it by virtue thereof, and payment of said mortgage has been duly assumed by (*James Brenner.*)

This statement and the foregoing copy of mortgage is filed to continue the notice required by the statute made and provided for the renewal of chattel mortgages.

That the said (*Domestic Brewing Company*) is now the owner and holder of said mortgage.

Dated, (*May 1, 1916.*)

(*THE DOMESTIC BREWING COMPANY,*)

by (*White & Parks,*) Attorneys.

FORM No. 572**Statement for Renewal of Mortgage Covering Personal Property**

The interest of the (*American Trust Company,*) formerly the (*Consolidated Trust Company,*) a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at (*No. 400 Fifth avenue, Borough of Manhattan, City of New York,*) the mortgagee named in the certain trust indenture of mortgage between the (*Columbia Magazine Company,*) a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office at (*No. 245 Fifth avenue, Borough of Manhattan, City of New York,*) and resident in said (*Borough, City*) and State, and said (*Consolidated Trust Company,*) which mortgage is dated the (*3d*) day of (*May, 1912,*) and was made and executed to secure an issue of bonds to the amount of (*one million (\$1,000,000) dollars,*) which mortgage was filed in the office of the (*Register*) of the County of (*New York,*) on the (*15th*) day of (*May, 1912,*) in the property thereby mortgaged and thereby claimed by it by virtue thereof, is that of Trustee, to have and to hold all of the property therein mentioned and described, together with the privileges, rights and appurtenances thereunto belonging, for the benefit and security of all and any persons, firms or corporations who have or shall at any time after the date of said mortgage, become or be the lawful owners or holders of the bonds, or any of them issued under and secured by

Statement for Renewal

said mortgage, as therein set forth, and who may be or become entitled to the benefit of the mortgage security thereby provided in pursuance of the provision of the said mortgage.

The chattels and property secured by said mortgage were located in the (*City of New York*) at the time of the execution of said mortgage and a copy of said mortgage and its endorsements is attached to this statement, showing the interest of the (*American Trust Company*,) formerly the (*Consolidated Trust Company*,) which has succeeded by merger, pursuant to the laws of the State of New York, to the interest of said (*Consolidated Trust Company*,) in the mortgage herein referred to.

Such bonds to the extent of (*one million (\$1,000,000) dollars*) together with coupons or interest thereto appertaining since (*May 3d, 1912*,) have been issued and are, with the exception of the coupons attached to said bonds that matured on (*November 3, 1912, May 3, 1913, November 3, 1913, May 3, 1914, November 3, 1914, May 3, 1915, November 3, 1915 and May 3, 1916*,) now outstanding.

Dated, (*New York, May 10th, 1916*.)

(*AMERICAN TRUST COMPANY*,)

By (*Alvin Elbourne*,) Vice-President.

CONDITIONAL SALES

The provisions of article ten of the Lien Law relating to Chattel Mortgages apply to the indorsement, entry, refiling and discharge of contracts for the conditional sale of goods and chattels, except contracts for the conditional sale of goods and chattels to be attached to a building.

See Note, Chattel Mortgages, p. 1124, and §§ 64, 65 and 66, *Personal Property Law*.

FORM No. 573

Conditional Sale Agreement

(I) hereby purchase from (*Mackcoll Company, Inc.*) under the terms and conditions and at the prices herein, (*one five-ton Packard truck*) as per standard specifications except as noted below.

This purchase is scheduled for shipment from (*their*) factory at (*Detroit, Mich.*) on or about (*November 15, 1916*.) to wit: Chassis No. (*100,600*.) Model (*X*) and is F. O. B. factory.

[Add Specifications]	[Add Description and Extras]	Price
	Freight, (<i>Detroit</i>) to (<i>N. Y. City</i>)	
	Insurance for Mos. on Chassis	
	Total of above items (constituting the	
	Purchase Price	\$.....
	Deduct Deposit (\$ <i>200</i>) on each chassis on	
	execution hereof .....	.....
	Balance after Deposit is deducted.....	.....
	Deduct Delivery Payment to be made upon	
	delivery of said chassis and equipment	
	to (<i>them</i>) .....	.....
	Unpaid Balance, to be paid hereafter, be-	
	ginning one month from date of Delivery	
	Payment, in six equal monthly instal-	
	ments in advance on the (<i>1st</i>) day of	
	each month, until the total amount of	
	Purchase Price above shown, with legal	
	interest hereinafter provided, is paid...	.....
	First Payment, \$....., plus \$..... interest, is.....	.....
	Second Payment, \$....., plus \$..... interest, is.....	.....
	Third Payment, \$....., plus \$..... interest, is.....	.....

Agreement

Fourth Payment, \$....., plus \$..... interest, is.....	.....
Fifth Payment, \$....., plus \$..... interest, is.....	
Sixth Payment, \$....., plus \$..... interest, is.....	

Total Unpaid Balance, \$.....; Total Interest...	\$.....
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This purchase is made subject to the conditions hereinafter contained, in which (*Mackcoll Company, Inc.*) is referred to as the seller and (*New York Auto Company*) is referred to as the purchaser.

CONDITIONS

1st. Delivery is subject to strikes, fires, floods, or any other causes not within the control of the Seller.

2d. It is understood and agreed that this contract is unassignable, and will not be transferred by the Purchaser without first securing the written consent of the Seller.

3d. If shipment is not made on schedule date, this order may be canceled and deposit returned provided written notice to that effect is given to the Seller by the Purchaser before the chassis is actually shipped from the factory at Detroit, Michigan.

4th. All payments are to be made by the Purchaser at the Office of the Seller in (*Albany, N. Y.*) without further notice or demand.

5th. The (truck and equipment) herein purchased are to be received and accepted by the purchaser but to remain the property of the Seller until amounts due or that may grow due hereunder are fully paid. In case of failure on the part of the Purchaser to make any of said payments when due as aforesaid, the Seller is hereby authorized, if it so elects, to treat this agreement as void and in that event, without notice to the Purchaser, to enter the premises of the Purchaser or other premises wherever said chassis and equipment, or any of them, may be found, and without legal process, to take and remove said chassis with the body and all equipment attached thereto or used in connection therewith, or either or any of said chattels, the Purchaser hereby waiving any action for trespass or damages therefor, and disclaiming any right of resistance thereto and forfeiting all payments previously made hereunder. The Purchaser further agrees to pay, in addition to the above amount, a reasonable attorney's fee should it become necessary for the Seller to begin suit to enforce the payment of said unpaid installments, or any of them, or to recover

Agreement

possession of said chassis and equipment, or any part thereof. In consideration of the above, it is understood that the Seller does not part with title to said chassis and equipment, or any part thereof, but that until said payments are completed as aforesaid, said title shall remain vested in the Seller as fully as if this agreement had not been entered into or said payments made. The Purchaser further agrees not to sell or mortgage the chattels hereby sold or to remove any of them to any point where they will not be fully under the Purchaser's control without first obtaining the written consent of the Seller, and the Purchaser agrees to be responsible to the Seller for the value of said chassis and equipment.

Purchaser hereby waives all of the provisions of sections 65, 66 and 67 of the Personal Property Law (Consolidated Laws of New York) as amended to date.

6th. The Purchaser hereby agrees during such time as title to said chassis may rest with the Seller to use the motor vehicle herein described with all reasonable care and caution, and to be responsible to the Seller for any damage or physical injury done to said vehicle, ordinary wear and tear excepted; and the Seller, its agents and servants, shall have access at all times during business hours to said vehicle, whether in operation or not, for the purpose of giving such mechanical attention to the chassis as may, in the Seller's judgment, be required from time to time. The Purchaser also agrees to deliver the said vehicle, together with its regular driver, to the Seller, at the Service Building of the latter, in (*Albany*,) two half days each month, on such scheduled dates as shall be mutually arranged at time of delivery of the chassis, for the purpose of inspection.

7th. The Purchaser hereby authorizes the Seller, during the term of this agreement, to make from time to time such repairs on the aforesaid vehicle as in the judgment of the Seller shall at any time be necessary to maintain said vehicle in marketable condition, or to save it from excessive depreciation, the Purchaser hereby agreeing to pay cash for all such repairs within ten days from presentation of invoice for same; and in case of Purchaser's default in making any such payment when due as aforesaid, the amount of said repairs shall be added to the current monthly installment next due as aforesaid. In case of Purchaser's failure to pay the same at the time said installment falls due, the Seller is authorized at its option to treat this agreement as void, and upon

Agreement

like conditions to resort to any of the remedies hereinbefore provided in case of Purchaser's default in making any payment due hereunder.

8th. In the event of the total loss or destruction of said chassis by fire or otherwise, the Seller shall have the sole right to collect the insurance or other form of indemnity that may be payable to it by reason of such destruction, and thereafter shall, out of the grand total made up from the total collected from the Purchaser, plus the total collected from the insurance company, pay to itself the list price of the chassis herein mentioned, plus the freight on said chassis and the premium it paid to the insurance company, and interest on the total amount of deferred payments above referred to, from the date of this agreement to the date of loss. The Seller shall thereupon pay to the Purchaser the balance remaining, which shall be accepted by the Purchaser in full settlement of all amounts due hereunder, and this contract shall thereafter be void.

9th. In the event of the partial loss or destruction by fire or otherwise of said chassis and equipment, the Seller shall take immediate steps for the necessary repair of the chassis and equipment hereby sold (body excepted), applying thereto such net amount as it may receive on account of insurance covering such loss, the Purchaser remaining liable for the balance, if any, of the cost of said repairs. In such case the Seller shall not be liable to the Purchaser as a result of such partial loss or destruction for any damages growing out of delays, temporary withdrawal from service, or any other cause whatever.

10th. It is mutually understood and agreed by and between the parties hereto that the insurance covering the chassis and equipment (exclusive of body) herein mentioned, which is to be taken out by the Seller as herein provided, shall be in the form of the sample policy, copy of which is attached and made a part hereof; and that the Purchaser shall remain liable to the Seller for the unpaid portion of the above selling price and interest in case a loss occurs which is not covered by said policy.

In order to enable Seller to give the Insurance Company the notice required by said policy the Purchaser agrees to give Seller written notice within five days of the occurrence of any and all accidents resulting in injury to said chassis or equipment, or in which persons or property are injured, by the truck of which said chassis forms a part.

Agreement

11th. All promises, verbal understandings or agreements of any kind pertaining to this purchase not contained herein are hereby expressly waived, this instrument constituting the entire agreement between the Seller and the Purchaser.

(*NEW YORK AUTO COMPANY,*)

Purchaser.

By (*Harrison Farmer,*)

City of (*New York,*) State of (*New York.*)

Business Address (*1382 Broadway.*)

Residence (*345 West End Avenue, Man-*
hattan.)

City of (*New York,*) State of (*New York.*)

Witness

(*JAMES MORTON,*) Salesman.

Accepted (*EDMUND BROWNE,*)

(*Mackcoll Company, Inc.*)

By (*GEORGE WHITSTONE.*)

CERTIFICATES

FORM No. 574

Certificate of Formation of Limited Partnership

(*ROGER WILLIAMS & CO.*) We, the undersigned desiring to form a limited partnership, under and pursuant to the laws of the State of New York, do hereby certify:

First. The name or firm under which said partnership is to be conducted is ("*ROGER WILLIAMS & CO.,*") and the county wherein the principal place of business is to be located is the County of (*New York,*) State of (*New York.*)

Second. The general nature of the business intended to be transacted by said partnership, is the business of (*general dry goods commission merchants.*)

Third. The names of the general and special partners interested in said partnership and business are (*Roger Williams, Robert C. Kole, Roy Roberts and Frank L. Angier,*) all of whom are of full age. The said (*Roger Williams*) is a general partner and his place of residence is (*66 Park Street, in the town of Larchmont,*) in the County of (*Westchester,*) and State of (*New York;*) the said (*Robert C. Kole*) is a general partner, and his place of residence is (*12 Elm Street in the town of East Orange,*) in the County of (*Essex*) and State of (*New Jersey;*) the said (*Roy Roberts*) is a special partner and his place of residence is (*No. 48 East 61st Street,*) in the (*Borough of Manhattan,*) in the (*City, County and*) State of (*New York,*) and the said (*Frank L. Angier*) is a special partner and his place of residence is (*66 Park Street in the town of Larchmont,*) in the County of (*Westchester*) and State of (*New York.*)

Fourth. The amount of capital which the said (*Roy Roberts*), one of the special partners, has contributed to the common stock of said partnership is (*fifty thousand*) (\$50,000) dollars.

Fifth. The amount of capital which the said (*Frank L. Angier*), one of the special partners has contributed to the common stock of said partnership is (*thirty thousand*) (\$30,000) dollars.

Sixth. The time at which said partnership is to begin is the (*first*) day of (*January, 1915,*) and the time at which said

Certificate of Formation

partnership is to end is the (*thirty-first*) day of (*December*, 1917.)

Dated, the (*28th*) day of (*December*, 1914.)

(*ROGER WILLIAMS*,) . (SEAL.)

(*ROBERT C. KOLE*,) (SEAL.)

(*ROY ROBERTS*,) (SEAL.)

(*FRANK L. ANGIER*,) (SEAL.)

(Acknowledgment)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*ROGER WILLIAMS*,) being duly sworn, says: I am one of the general partners named in the foregoing certificate. The sum of (*fifty thousand*) dollars specified in the said certificate to have been contributed to the common stock of said partnership by (*Roy Roberts*,) one of the special partners, has been actually and in good faith paid in cash, and the sum of (*thirty thousand*) dollars specified in said certificate to have been contributed to the common stock of said partnership by (*Frank L. Angier*,) one of the special partners, has been actually and in good faith paid in cash.

(*ROGER WILLIAMS*,)

Sworn to before me, this }
(*28th*) day of (*December*, 1914.) }

(*May Collins*,)

Notary Public (70) (*N. Y.*) Co.

(Notarial Seal.)

If the partnership has places of business situated in different counties, a copy of the certificate, and of the acknowledgment thereof, certified by the clerk in whose office it is filed, under his official seal, shall be filed and recorded in like manner, in the office of the clerk of each county.

Certificate of Renewal

FORM No. 575

Certificate of Renewal of Limited Partnership

(*PRINCE & WHITELEY.*)—Certificate of renewal of limited partnership.

(*We, Maynard C. Eyre, William A. Jennings, Archibald Fleming McLiesh and Milo Roy Campbell,*) all persons of full age of twenty-one years and upwards, as subscribers, having heretofore formed a limited partnership, pursuant to the statutes of the State of New York, and desiring to renew and continue the same on the same terms and conditions for a further period and until (*January 2, 1917,*), do hereby certify:

(1) That the name of the firm under which said partnership is to be conducted is (*Prince & Whitely,*) and the county wherein the principal place of business is to be located is New York County.

(2) That the general nature of the business intended to be transacted by such limited partnership is that of brokers and commission merchants and dealers in stocks, bonds, notes, foreign and domestic exchange and other securities, gold and silver, and in breadstuffs, produce, grain, provisions, cotton, coal and petroleum.

(3) That the names of all the general and special partners interested therein, all of whom are over twenty-one years of age, and their respective places of residence, are as follows:

(*Maynard C. Eyre,*) residing at (*Clifton, Staten Island,*) in the State of (*New York, U. S. A.;*) (*William A. Jennings,*) residing at (*28 Bank Street, Borough of Manhattan, New York City,*) in the State of (*New York, U. S. A.,*) and (*Archibald Fleming McLiesh,*) residing at (*No. 116 Lincoln Place, Borough of Brooklyn, in the City of New York,*) in the State of (*New York, U. S. A.,*) are the general partners, and (*Milo Roy Campbell,*) residing at (*Chicago,*) in the State of (*Illinois, U. S. A.,*) is the special partner.

(4) That the amount of capital which the said (*Milo Roy Campbell,*) the special partner, as aforesaid, has contributed to the common stock of said limited partnership in cash is the sum of one hundred and ten thousand (\$110,000) dollars.

(5) That the said renewed limited partnership is to begin on the termination of the present firm of (*Prince & Whitely,*) on

Certificate of Renewal

the (*third day of January, 1916,*) and will terminate on the (*second day of January, 1917.*)

Dated in the City of (*New York,*) in the State of (*New York,* *January 3d, 1916.*)

(<i>MAYNARD C. EYRE,</i>)	[L. S.]
(<i>WILLIAM A. JENNINGS,</i>)	[L. S.]
(<i>ARCHIBALD FLEMING McLIESH,</i>)	[L. S.]
(<i>MILO ROY CAMPBELL.</i>)	[L. S.]

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

On this (*third*) day of (*January, 1916,*) before me personally and severally appeared (*Maynard C. Eyre, William A. Jennings, Archibald Fleming McLiesh and Milo Roy Campbell,*) to me known and known to me to be the persons described in and who executed the foregoing instrument and certificate, and they severally acknowledged to me that they executed the same for the uses and purposes therein mentioned.

[SEAL.] (*OWEN E. ABRAHAM,*)
Notary Public, N. Y. Co. No. 5.

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*MAYNARD C. EYRE,*) being duly sworn, deposes and says that he is one of the general partners named in the foregoing certificate; that the sum of one hundred and ten thousand (\$110,000) dollars, specified in said certificate to have been contributed to the common stock by the special partner therein named, to wit, (*Milo Roy Campbell,*) has been actually and in good faith paid by him in cash to the said common stock.

(*MAYNARD C. EYRE.*)

Sworn to before me, this }
(*3d*) day of (*January, 1916.*) }

(*OWEN E. ABRAHAM,*) [SEAL.]
Notary Public, N. Y. Co. No. 5.

Certificate of Continuation of Name

FORM No. 576

Certificate of Continuation of Firm Name

(*CHARLES HUBBARD AND COMPANY.*)—Certificate.

WHEREAS, the business of dealing in iron and steel products heretofore conducted in the City of New York and elsewhere by (*Charles Hubbard*) (*now deceased*), and (*Lyman J. Fisher,*) as copartners under the firm name and style of (*Charles Hubbard and Company,*) is to be continued and is now continued by (*Lyman J. Fisher,*) the undersigned; and

WHEREAS, said partnership has had business relations with foreign countries and has transacted business under said firm name within the State of New York for more than three years last past; and

WHEREAS, the business heretofore conducted by said copartners is to be conducted hereafter by the undersigned, (*Lyman J. Fisher,*) under the name of (*Charles Hubbard and Company;*) and

WHEREAS, said (*Lyman J. Fisher*) is the successor in interest to the persons heretofore using such name;

Now, therefore, (*I, Lyman J. Fisher,*) residing at (*No. 329 South Vine Street, Richmond Hill, Queens County, New York,*) pursuant to the statute in such case made and provided, do hereby certify and declare that I am the person dealing and intending to deal under said firm name of (*Charles Hubbard and Company,*) and that my post office address and principal place of business at and from which said business is and will be conducted is (*No. 81 Fulton Street, Borough of Manhattan, City, County and State of New York.*)

IN WITNESS WHEREOF, I have hereunto set my hand and seal this (29th) day of (*December, 1915.*)

(*LYMAN J. FISHER.*) [L. S.]

In presence of

.....

(Acknowledgment)

Certificate of Continuation of Name

FORM No. 577

Certificate of Continuation of Partnership Name

(*Carter, Ledyard & Milburn,*)—Know All Men by these Presents:

WHEREAS, the business of the firm of (*Carter, Ledyard & Milburn,*) a firm having business relations with foreign countries, continues to be conducted by some of the partners therein, to wit, by (*Lewis Cass Ledyard, John G. Milburn, Edmund L. Baylies and George A. Miller,*) who were partners in such firm.

NOW, THEREFORE, the undersigned, the said (*Lewis Cass Ledyard, John G. Milburn, Edmund L. Baylies and George A. Miller,*) who were partners in said firm, together with (*Lewis Cass Ledyard, Jr.,*) in pursuance of the statute in such case made and provided, do make and sign this certificate, and do declare that the persons intending to deal under such name, with their respective places of residence, are as follows:

(*Lewis Cass Ledyard,*) residing at (*No. 27 East Seventy-second Street,*) City of (*New York.*)

(*John G. Milburn,*) residing at (*No. 16 West Tenth Street,*) City of (*New York.*)

(*Edmund L. Baylies,*) residing at (*No. 20 West Thirty-sixth Street,*) City of (*New York.*)

(*George A. Miller,*) residing in the (*Town of Montclair,*) State of (*New Jersey.*)

(*Lewis Cass Ledyard, Jr.,*) residing at (*No. 64 East Seventy-third Street,*) City of (*New York.*)

Dated, (*New York, February 1, 1907.*)

(*LEWIS CASS LEDYARD,*)

(*JOHN G. MILBURN,*)

(*EDMUND L. BAYLIES,*)

(*GEORGE A. MILLER,*)

(*LEWIS CASS LEDYARD, JR.*)

(Acknowledgment)

Trade Name — Estoppel

FORM No. 578

**Certificate of Persons Doing Business Under Assumed Business Name
(Required by 440, Penal Law)**

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

WE DO HEREBY CERTIFY that the undersigned are conducting (or on and after this date intend to conduct,) (*a garage for the storage and repair of motor vehicles*) and are transacting (or intend to transact) the business of (*storing, caring for and repairing and renting motor vehicles and selling supplies for same,*) at (*No. 30 West 100th Street, in the Borough of Manhattan, City, County and State of New York,*) under the name of ("*The Knickerbocker Garage;*") and that the true or real full name of each of the persons conducting or transacting such business with the post-office address of each of said persons is as follows:

(*Walter G. Johnson, 418 Central Park West, Manhattan, New York City.*)

(*Gordon Johnson, 20 West 77th Street, Manhattan, New York City.*)

Dated, (*New York, May 15, 1915.*)

(*WALTER G. JOHNSON,*)

(*GORDON JOHNSON.*)

(Acknowledgment)

FORM No. 579

Estoppel Certificate

I, (*Walter T. Rose,*) residing at (*114 West 74th Street, in the Borough of Manhattan, City of New York,*) and owning premises situate in (*the Borough of Manhattan, City of New York,*) bounded and described as follows:

.
which premises are covered by a mortgage for (*twenty-five hundred*) dollars, dated the (*26th*) day of (*July, 1910,*) recorded on the (*26th*) day of (*July, 1910,*) in the office of the (*Register*) of

Protest

the County of (*New York*,) in Liber (103) of Mortgages, section (12,) at page (332,) and indexed under Block No. (140) on the Land Map of the City of (*New York*,) which mortgage is about to be assigned by (*Margaret Kimble*,) the holder, to (*Edward H. Winkle*,)

DO HEREBY CERTIFY, in consideration of the sum of one dollar paid, the receipt whereof is hereby acknowledged, and to induce said assignment to be accepted, that said mortgage so to be assigned is a valid (*first*) lien on said premises for the full amount of principal and interest due thereon, namely (*twenty-five hundred*) dollars, and interest at (*five*) per cent. per annum from the (*fifteenth*) day of (*April*, 1915,) and that there are no defenses or offsets to said mortgage, or to the bond which it secures, and that all the other provisions of said bond and mortgage are in force and effect.

IN WITNESS WHEREOF, I have hereto set my hand and seal this (*fifteenth*) day of (*April*,) one thousand nine hundred and (*sixteen*.)

(*WALTER T. ROSE*.) [SEAL.]

In the presence of

(*MEYER VAN DAM*.)

(Acknowledgment)

FORM No. 580

Certificate of Protest

(\$750.00)

(*Troy, N. Y., December 10, 1915.*)

(*UNION NATIONAL BANK pay to John Drexel, or order, seven hundred and fifty*) (\$750) dollars.

(*WILLIAM FRYE*.)

STATE OF NEW YORK, }
County of (*Rensselaer*,) } ss.:

On the (*twenty-first*) day of (*December*, 1915,) at the request of (*John Drexel*,) I, (*Joseph Kernan*,) a Notary Public of the State of (*New York*,) duly commissioned and sworn, and residing in (*Rensselaer*) County, did present the original check hereunto annexed, to (*the Union National Bank of Troy, New York*,) at

Protest

(*Troy, N. Y.*,) and demanded payment thereof, which was refused, upon the ground that the drawer had not sufficient funds in his account to meet said check.

WHEREUPON, I, the said notary, at the request aforesaid, did protest and by these presents to publicly and solemnly protest, as well against the drawer and indorser of the said check as against all others whom it doth or may concern, for exchange, re-exchange and all costs, damages and interest already incurred, and to be hereafter incurred for want of payment of the same.

Thus done and protested in the (*City of Troy, County of Rensselaer*) aforesaid, in the presence of

(*JOHN DOE and RICHARD ROE,*)

Witnesses.

IN TESTIMONIUM VERITATIS.

(*JOSEPH KERNAN,*)

Notary Public.

STATE OF NEW YORK, }
County of (*Rensselaer,*) } ss.:

I, (*Joseph Kernan,*) a Notary Public of the State of (*New York,*) duly commissioned and sworn, do hereby certify, that on the (*twenty-first*) day of (*December,*) one thousand nine hundred and (*fifteen,*) due notice of the presentment and protest of the said check after demand and refusal of payment thereof, by notice, partly written and partly printed, signed by me, was given by me to the drawer and the respective indorsers of the said instrument, by depositing the same in the post-office at (*Troy, N. Y.*) [pre-paying the postage thereon], duly directed and superscribed to said drawer and indorsers, as follows, to wit:

To

(*William Frye, at 689 River Street, Troy, N. Y.*)

(*John Fox, at 165 First Street, Troy, N. Y.*)

(*Charles Collins, at 30 Pawling Avenue, Troy, N. Y.*)

The above-named places being the reputed places of residence of the persons to whom such notice was so addressed, and the post-office nearest thereto.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at (*the City of Troy,*) county of (*Rensselaer,*) and State of (*New York.*)

(*JOSEPH KERNAN,*)

Notary Public.

DEEDS

In a city of over two hundred thousand inhabitants, the address of grantee by street and street number must be stated in deed.

FORM No. 581

Deed With Full Covenants—Individual to Corporation

THIS INDENTURE, made the (*third*) day of (*January*), nineteen hundred and (*sixteen*), between (*Ella Payne unmarried of Passaic, New Jersey*), party of the first part, and (*West Construction Company, a corporation organized under the laws of the State of New York, having its principal office and place of business at No. 2255 Broadway, in the Borough of Manhattan, of the City of New York*), party of the second part,

WITNESSETH, that the party of the first part, in consideration of (*one hundred*) dollars, lawful money of the United States, (*and other valuable consideration*) paid by the party of the second part, does hereby grant and release unto the party of the second part, (*its successors*) and assigns forever, ALL * * * [description], together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, (*its successors*) and assigns forever, (*subject to a mortgage for \$20,000 upon which there remains unpaid \$16,000, and interest now a lien on said premises.*)

AND said (*party of the first part*) covenants as follows:

First. That said (*party of the first part*) is seized of the said premises in fee simple, and has good right to convey the same;

Second. That the party of the second part shall quietly enjoy the said premises;

Third. That the said premises are free from incumbrances, (*except as aforesaid*);

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. That said (*party of the first part*) will forever warrant the title to the said premises.

With Full Covenants — Corporation

IN WITNESS WHEREOF, the party of the first part has hereunto set (*her*) hand and seal the day and year first above written.

(*ELLA PAYNE.*) [L. S.]

In presence of

(*F. F. THOMASSON.*)

(Acknowledgment)

FORM No. 582**Deed With Full Covenants — Corporation**

THIS INDENTURE, made the (*eighth*) day of (*March*), nineteen hundred and (*sixteen*), between (*Prix Construction Company*), a corporation organized under the laws of (*the State of New York*), party of the first part, (*and North Investing Corporation, also a corporation organized under the laws of the State of New York, having its principal office and place of business at No. 451 West 91st Street, in the Borough of Manhattan, of the City of New York*), party of the second part,

WITNESSETH, that the party of the first part, in consideration of (*one hundred*) dollars, lawful money of the United States, (*and other valuable consideration*) paid by the party of the second part, does hereby grant and release unto the party of the second part, (*its successors*) and assigns forever, ALL * * * [description], together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, (*its successors*) and assigns forever, AND the party of the first part covenants as follows:

First. That the party of the first part is seized of the said premises in fee simple, and has good right to convey the same;

Second. That the party of the second part shall quietly enjoy the said premises;

Third. That the said premises are free from incumbrances;

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. That the party of the first part will forever warrant the title to the said premises.

 Bargain and Sale — Without Covenant

IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

(*PRIX CONSTRUCTION COMPANY*.)

[SEAL.] By (*Charles Prix*.)

President.

(Acknowledgment)

FORM No. 583

Bargain and Sale Deed — Without Covenant Against Grantor — Individual

THIS INDENTURE, made the (11th) day of (*March*.) nineteen hundred and (*sixteen*.) between (*Priscilla Fay, of the Borough of Manhattan, City of New York, County and State of New York*.) party of the first part, and (*Oscar Olsen, residing at No. 161 West 81st Street, Borough of Manhattan, of the same place*.) party of the second part,

WITNESSETH, that the party of the first part, in consideration of (*eighteen thousand*) dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, (*his heirs*) and assigns forever, ALL * * * [description], together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, (*his heirs*) and assigns forever.

IN WITNESS WHEREOF, the party of the first part has hereunto set (*her*) hand and seal the day and year first above written.

(*PRISCILLA FAY*.) [L. s.]

In presence of

(*THOMAS WINGATE*.)

(Acknowledgment)

Bargain and Sale — Without Covenant

FORM No. 584

**Bargain and Sale Deed — Without Covenant Against Grantor —
Corporation**

THIS INDENTURE, made the (12th) day of (May,) nineteen hundred and (sixteen,) between (*Lake Building Company, Inc., a domestic*) corporation organized under the laws of (*the State of New York,*) party of the first part, and (*Lucien Black, who resides at 316 West 79th Street, Borough of Manhattan, City of New York,*) party of the second part.

WITNESSETH, that the party of the first part, in consideration of (*one hundred*) dollars, lawful money of the United States, (*and other valuable consideration*) paid by the party of the second part, does hereby grant and release unto the party of the second part, (*his heirs*) and assigns forever, ALL * * * [description], together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, (*his heirs*) and assigns forever, (*subject to covenants and restrictions contained in agreement recorded in section 4, Liber 27 of Conveyances, page 440, so far as the same may affect. Subject also to a first mortgage for seventeen thousand dollars and interest now a lien on said premises.*)

IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

(LAKE BUILDING COMPANY, INC.,)

[SEAL.] By (James Lake,
President.

Attest:

(THERESA SCRIVEN,
Secretary.

(Acknowledgment)

Bargain and Sale — With Covenant

FORM No. 585

Bargain and Sale Deed — With Covenant Against Grantor —
Individual

THIS INDENTURE, made the (28th) day of (*January*,) nineteen hundred and (*sixteen*,) between (*Sarah Elizabeth Tyler, also known as Sarah Elizabeth Tile*,) party of the first part, and (*Albert Norris, residing at No. 71 Palmetto Street, Borough of Brooklyn, City of New York*,) party of the second part,

WITNESSETH, that the party of the first part, in consideration of the sum of (*one hundred*) dollars lawful money of the United States, (*and other valuable considerations*,) paid by the party of the second part, does hereby grant and release unto the party of the second part, (*his heirs*) and assigns forever, ALL * * * [description], together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, (*his heirs*) and assigns forever,

AND the said (*Sarah Elizabeth Tyler, also known as Sarah Elizabeth Tile*,) covenants that (*she*) has not done or suffered anything whereby the said premises have been incumbered in any way whatever (*except to execute a certain mortgage recorded in the office of the Register of the County of New York, on October 4, 1898, in Liber 981, section 4 of Mortgages, at page 51, Block 1224.*)

IN WITNESS WHEREOF, the party of the first part has hereunto set (*her*) hand and seal the day and year first above written.

(*SARAH ELIZABETH TYLER.*) [L. S.]

In presence of

(*JOHN J. HALPIN.*)

(Acknowledgment)

Bargain and Sale — With Covenant

FORM No. 586

Bargain and Sale Deed — With Covenant Against Grantor.—
Corporation

THIS INDENTURE, made the (29th) day of (*February*,) nineteen hundred and (*sixteen*,) between (*West Side Savings Bank*,) a corporation organized under the laws of (*the State of New York*,) party of the first part, and (*The United Realty Company*, a corporation organized and existing under the laws of the State of New York, having its principal place of business at No. 20 Nassau Street, Borough of Manhattan, City and County of New York,) party of the second part,

WITNESSETH, that the party of the first part, in consideration of (*seventeen thousand*) dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, (*its successors, legal representatives*) and assigns forever, ALL * * * [description], together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, (*its successors*) and assigns forever. (*Subject to a purchase money mortgage made by the party of the second part to the party of the first part delivered and intended to be recorded simultaneously herewith,*)

AND the party of the first part covenants that it has not done or suffered anything whereby the said premises have been incumbered in any way whatever, (*except as aforesaid.*)

IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

(*WEST SIDE SAVINGS BANK,*)
[SEAL.] By (*Clarence D. Bigelow,*)
President.

Attest:

(*WILLIAM HUDSON,*)

Secretary.

(Acknowledgment)

Quitclaim — Individual — Corporation

FORM No. 587**Quitclaim Deed — Individual**

THIS INDENTURE, made the (14th) day of (*April*,) nineteen hundred and (*sixteen*,) between (*Helen Bryan of the City of New York*,) party of the first part, and (*Joseph F. Foster, residing at No. 416 St. Nicholas Avenue, City of New York*,) party of second part,

WITNESSETH, that the party of the first part, in consideration of (*one*) dollar lawful money of the United States, paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, (*his heirs*) and assigns forever, ALL * * * [description], together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, (*his heirs*) and assigns forever, (*subject, however, to a mortgage of nineteen thousand dollars.*)

IN WITNESS WHEREOF, the party of the first part has hereunto set (*her*) hand and seal the day and year first above written.

(*HELEN BRYAN.*) [L. s.]

In presence of

(*AGNES RAY.*)

(Acknowledgment)

FORM No. 588**Quitclaim Deed — Corporation**

THIS INDENTURE, made the (*third*) day of (*May*,) nineteen hundred and (*sixteen*,) between (*The A. B. S. Company, Inc.*,) a corporation organized under the laws of (*the State of New York*,) party of the first part, and (*233-5 West 125th Street Corporation, a corporation organized under the laws of the State of New York, having its principal place of business at No. 238 William Street, Borough of Manhattan, City of New York*,) party of the second part,

Executors'— Individual or Corporation

WITNESSETH, that the party of the first part, in consideration of (*ten*) dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, (*its successors*) and assigns forever, ALL * * * [description], together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, (*its successors*) and assigns forever.

IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

(*THE A. B. S. COMPANY, INC.,*)

By (*Albert Birsby,*)

President.

[SEAL.] (*A. B. S. COMPANY, Inc.,*)

Attest: (*Incorporated 1913, New York.*)

(*JOHN WHITE,*)

Secretary.

(Acknowledgment)

FORM No. 589

Executors' Deed — Individual or Corporation

THIS INDENTURE, made the (*2d*) day of (*May,*) nineteen hundred and (*sixteen,*) between (*Clarence Kelly,*) as (*administrator with the will annexed of May G. Pinkerton,*) late of (*New York City,*) deceased, party of the first part, and (*Cosmopolitan Baptist Church, a corporation, whose principal office is at No. 45 West 134th Street, in the Borough of Manhattan, City of New York,*) party of the second part,

WITNESSETH, that the party of the first part, by virtue of the power and authority to (*him*) given in and by said last will and testament, and in consideration of (*thirty thousand*) dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, (*its successors*) and assigns forever, ALL * * * [description], together with the appurtenances, and also all the estate

 Referee in Partition

which said testat(rix) had at the time of (her) decease in said premises, and also the estate therein which the party of the first part has or had power to convey or dispose of, whether individually, or by virtue of said will or otherwise.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, its successors and assigns forever, (*subject to a mortgage for twenty-six thousand dollars and interest, made by said party of the second part to said party of the first part, delivered simultaneously herewith, and given to secure a portion of the consideration hereinabove mentioned,*)

AND the party of the first part covenants that (he) has not done or suffered anything whereby the said premises have been incumbered in any way whatever, (*except as aforesaid.*)

IN WITNESS WHEREOF, the party of the first part has hereunto set (his) hand and seal the day and year first above written.

(CLARENCE KELLY, as Administrator
[SEAL] With the Will Annexed of MAY G.
PINKERTON.)

In presence of

(HARRY B. GERLEY.)

(Acknowledgment)

 FORM No. 590

* Referee's Deed in Partition

THIS INDENTURE, made the (*twentieth*) day of (*April*), nineteen hundred and (*sixteen*), between (*Carl Stanley, residing at No. 54 West 98th Street, Borough of Manhattan, City, County and State of New York,*) Referee duly appointed as hereinafter mentioned, party of the first part, and (*John Henderson, residing at No. 22 West 61st Street, in said Borough, City, County and State,*) party of the second part,

WHEREAS, at a Special Term (*Part I*) of the (*Supreme Court of the State of New York, held in and for the County of New York at the County Court House in the Borough of Manhattan, City of New York,*) on the (*14th*) day of (*January*), nineteen hundred and (*sixteen*), it was among other things ordered, adjudged and decreed by said Court, in a certain action

* For Referee's Deed in Foreclosure see Form No. 375, p. 774.

Referee in Partition

then pending in said Court, between (*Mary Blake, plaintiff, against George Clover and Frances Clover, his wife; Frances Clover as committee of the estate of George Clover, an incompetent person, Charles Clover and Maude Clover, his wife, Charlotte French and Victoria Lewis and Henry Lewis as administrator of the goods, chattels and credits of Charles Lewis, deceased, and Gustave Williams and Frances Clover as executrix of the last will and testament of George Clover,*) defendants, that all and singular the premises mentioned in the complaint in said action, be sold at public auction, according to the course and practice of said Court, by or under the direction of said party of the first part as Referee thereby duly appointed for that purpose, and to whom it was referred by said Court, among other things, to make such sale; that the Referee give public notice of the time and place of such sale according to law and the course and practice of said Court, and that any of the parties in said action might become a purchaser or purchasers at such sale; that said Referee, after said sale, make report thereof to said Court, and after his report of sale shall have been duly confirmed, then that he execute to the purchaser or purchasers of said premises, or such part or parts thereof as should be sold, a good and sufficient deed or deeds of conveyance for the same.

AND WHEREAS, said Referee, in pursuance of said judgment, did, on the (21st) day of (*February,*) nineteen hundred and (*sixteen,*) sell at public auction at (*the Exchange Sales Rooms, now located at Nos. 14 and 16 Vesey Street, in the City and County of New York, where said premises are situated,*) the premises hereinafter described, being in said judgment mentioned, due notice of the time and place of such sale having first been given, pursuant to said judgment, at which sale said premises were struck off to (*the United Realty Company, a domestic corporation, which said United Realty Company thereafter duly assigned its bid and rights under such sale by an assignment in writing, to the above-named John Henderson, party of the second part, for the sum of two thousand six hundred and fifty (\$2,650) dollars,*) lawful money of the United States, that being the highest sum bidden for same, and said Referee's report of said sale having been duly confirmed,

NOW, THIS INDENTURE WITNESSETH, that said Referee, the party of the first part to these presents, in order to

Agreement

carry into effect the sale so made by (*him*) as aforesaid, in pursuance of the judgment of said Court, and in conformity with the statute in such case made and provided, and also in consideration of the premises, and of said sum of money so bidden as aforesaid, paid by the party of the second part, does hereby grant and convey unto the party of the second part, (*his heirs, executors, administrators*) and assigns forever, ALL * * * [description.]

TO HAVE AND TO HOLD, the premises herein granted unto the party of the second part, (*his heirs, executors, administrators*) and assigns forever.

IN WITNESS WHEREOF, the party of the first part has hereunto set (*his*) hand and seal the day and year first above written.

(*CARL STANLEY,*) *Referee.* (L. S.)

In presence of

(*WILLIAM BAYER.*)

(Acknowledgment)

FORM No. 591**Extension of Mortgage**

AGREEMENT, made the (*third*) day of (*November,*) one thousand nine hundred and (*fifteen,*) between (*The Union State Trust Company, a corporation organized and existing under the Laws of the State of New York, having its principal place of business at 322 William Street, in the Borough of Manhattan, City of New York, as successor Trustee under the Last Will and Testament of Morris Mann, deceased, and James Mann, residing at 1244 Park Avenue, Borough of Manhattan, City of New York, as trustee*) hereinafter designated as the parties of the first part, and (*Frederick Vann, residing at No. 371 West 70th Street, Borough of Manhattan, City of New York,*) hereinafter designated as the party of the second part:

WITNESSETH, that the parties of the first part, the holders of a certain bond made by (*Cora E. Smith,*) dated (*April 18, 1901,*) secured by a mortgage bearing even date therewith, and recorded in the office of the (*Register*) of the County of (*New York,*) in

Agreement

Liber (3296) of section (4) of Mortgages, page (435,) on which bond there is now due the sum of (*seven thousand five hundred*) (7,500) *dollars*, with interest at (*four and one-half*) per centum per annum, from (*April 18, 1915,*) in consideration of one dollar paid by said party of the second part, and other valuable considerations, the receipt whereof is hereby acknowledged, does hereby extend the payment of the principal indebtedness secured by said bond to the (*twenty-second*) day of (*October,*) one thousand nine hundred and (*eighteen;*) PROVIDED the party of the second part meanwhile pay interest on the amount owing on said bond at the rate of (*four and one-half*) per centum per annum, from (*April 18, 1915,*) (*instead of five per centum per annum;*) and semi-annually on the (*twenty-second*) days of (*October*) and (*April*) in each year and also comply with all the other terms of said bond and mortgage as hereby modified; AND the party of the second part, in consideration of the above extension and of one dollar paid by said party of the first part, and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby covenant to pay said principal sum, and interest as above set forth, and not before the maturity thereof as the same is hereby extended, and to comply with the other terms of said bond and mortgage; and the party of the second part covenants that the principal and the interest hereby agreed to be paid, shall be a lien on the mortgaged premises and be secured by said bond and mortgage, and that when the terms of said bonds and mortgage in any way conflict with the terms and provisions of this agreement, the terms and provisions of this agreement shall prevail, and that there are no offsets or defences to said bond and mortgage.

In the event of the passage after the date of this agreement of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for State or local purposes, or the manner of the collection of any such taxes, so as to affect said mortgage, the holder of said mortgage and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of the land covered by said mortgage requiring the payment of the mortgage debt. It is hereby agreed that if such notice be given the said debt shall become due, payable and collectible at the expiration of said thirty days.

Agreement

The party of the second part represents that said party of the second part now owns the premises described in said mortgage.

And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the first part after default in payment of any installment of principal, or after default in the payment of interest for thirty days, or after default in the payment of any tax or assessment for thirty days after notice and demand, or after default for thirty days after notice and demand in the payment of any installment of any assessment for local improvement heretofore or hereafter laid which is or may become payable in annual installments, and which has affected, now affects or hereafter may affect the premises covered by said mortgage notwithstanding that such installment be not due and payable at the time of such notice and demand; and also, that the whole of the said principal sum shall become due at the option of the party of the first part upon any default in keeping the buildings on the premises insured against loss by fire as required by said mortgage or immediately upon the actual or threatened demolition or removal of any building erected upon said premises, or if after application by any holder of said mortgage to two or more fire insurance companies lawfully doing business in the State of New York, and issuing policies upon real property situate in the place where the mortgaged premises are situate, the companies to which such application has been made shall refuse to issue such policies.

The party of the second part, and any subsequent owner of the premises described in said mortgage, upon request made either personally or by mail, shall certify, by a writing duly acknowledged, to the party of the first part or to any proposed assignee of said mortgage, the amount of principal and interest then owing on said mortgage and whether any offsets or defences exist against the mortgage debt; upon failure to furnish such certificate after the expiration of six days in case the request is made personally, or after the expiration of thirty days after the mailing of such request in case the request is made by mail, said mortgage shall become due at the option of the holder thereof.

If any action or proceeding be commenced by any person other than the holder of said mortgage (except an action to foreclose said mortgage or to collect the debt secured thereby), to which action or proceeding the holder of said mortgage is made a party,

Agreement

or in which it becomes necessary to defend or uphold the lien of said mortgage, all sums paid by the holder of said mortgage for the expense of any litigation to prosecute or defend the rights and lien created by said mortgage (including reasonable counsel fees), shall be paid by the party of the second part, together with interest thereon at the rate of six per cent. per annum, and any such sum and the interest thereon shall be a lien on said premises, prior to any right or title to, interest in or claim upon said premises attaching or accruing subsequent to the lien of said mortgage, and shall be deemed to be secured by said mortgage, and by the bond which it secures. In any action or proceeding to foreclose said mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

The mailing of a written notice or demand by depositing it in any post-office, station or letter box, enclosed in a post-paid envelope addressed to the owner of record of said mortgaged premises and directed to such owner at the last address actually furnished to the holder of said mortgage, or, if no such address has been furnished, then to such record owner at the mortgaged premises, shall be sufficient notice and demand in any case arising under this instrument.

This agreement shall bind the heirs, executors, administrators, successors and assigns of the respective parties.

IN WITNESS WHEREOF, the parties hereto have signed this agreement and affixed their seals the day and year first above written.

(JAMES MANN,) (SEAL.)
as Trustee.

(The Union State Trust Company as successor and Trustee under the last Will and Testament of Morris Mann, deceased,)

by (ARTHUR HURLEY,) President.

(FREDERICK VANN.) (SEAL.)

Attest:

(A. HOLMES,) Secretary.

(Acknowledgment)

Agreement

FORM No. 592

Mortgage Extension Agreement — Reducing Rate of Interest — Two Mortgages

AGREEMENT, made the (4th) day of (October,) nineteen hundred and (fifteen,) between (Simon R. Wilson,) residing at (No. 810 West End Avenue, Borough of Manhattan, City of New York, (as Trustee,) and (The Farmers' Loan and Trust Company, a Corporation organized and existing under the Laws of the State of New York, having its principal place of business at No. 22 William Street, in the Borough of Manhattan, City of New York, as Successor Trustee under the Last Will and Testament of Max Wilson, deceased,) hereinafter designated as the parties of the first part, and (Charles Fenwick,) residing at (No. 271 West 80th Street, Borough of Manhattan, City of New York,) hereinafter designated as the party of the second part,

WITNESSETH, that the parties of the first part, the holders of a certain bond made by (Cora E. Stevenson,) dated (April 18th, 1889,) secured by a mortgage bearing even date therewith and recorded in the office of the (Register of the County of New York,) in Liber (2396) of Mortgages, page (435,) on which bond there is now due the sum of (\$7,500) with interest thereon from the (twenty-second) day of (April, 1915,) at and after the rate of (five) per centum per annum, in consideration of One Dollar paid by the said party of the second part, the receipt whereof is hereby acknowledged, does hereby extend the payment of the principal indebtedness secured by said bond, as reduced, to the (twenty-second) day of (October,) nineteen hundred and (eighteen,) PROVIDED the party of the second part meanwhile pays interest thereon (as reduced to \$7,500) from the (twenty-second) day of (April,) nineteen hundred and (fifteen,) at and after the rate of (five) per centum per annum instead of (six) per centum per annum as expressed in said bond, and semi-annually thereafter on the (twenty-second) days of (October) and (April) in each year, and also comply with all the other terms of said bond and mortgage: AND the party of the second part, in consideration of the above extension, and of One Dollar paid by the said parties of the first part, the receipt whereof is hereby acknowledged, does hereby agree to pay said principal sum and

Agreement

interest as above set forth and to comply with the other terms of said bond and mortgage.

The party of the second part represents that he now owns the premises described in said mortgage.

This agreement shall bind the heirs, executors, administrators, successors and assigns of the respective parties.

IN WITNESS WHEREOF, (*Simon R. Wilson,*) one of the parties of the first part, has hereunto set his hand and seal, and (*The Farmers' Loan and Trust Company,*) the other party of the first part, has caused its corporate seal to be hereunto affixed and these presents to be signed by its President and duly attested, and the party of the second part has hereunto set his hand and seal the day and year first above written.

(*SIMON R. WILSON,*) [SEAL.]

As Trustee.

(*The Farmers' Loan and Trust Company,*
as Successor and Trustee under the
Last Will and Testament of Max
Wilson, deceased,)

By

(*E. S. MARSTON,*) President.

Attest:

(*A. W. HEELY,*) Secretary.

[SEAL.]

(*CHARLES FENWICK,*)

[SEAL.]

(Acknowledgment)

GENERAL ASSIGNMENT FOR BENEFIT OF CREDITORS

The making of a general assignment today is precarious unless you have consulted and obtained the consent of a majority of your creditors in number and amount.

If after the making of a general assignment for the benefit of creditors, you are petitioned into bankruptcy and if you have not obtained the consent of a majority of your creditors, the Federal Court will not look with favor on your proceeding. The more creditors in amount and number you have obtained, the more favorably you will appear in applications in the Federal Court. See opinion in the case of *D. & E. Dress Co., Southern District* by Mayer, J. and opinions by Hand, J., *N. Y. L. J.* July 3, 1916.

See Letter to General Assignee, p. 170.

FORM No. 593

General Assignment — By Individual

THIS INDENTURE, made the (*third*) day of (*April*), in the year one thousand nine hundred and (*fifteen*), between (*James Lyman*), residing at (*No. 124 Washington avenue, in the Borough of Brooklyn, City of New York, in the State of New York*), and carrying on the business of (*importing silks*) at (*No. 25 Greene street, in the Borough of Manhattan, in said City of New York*), party of the first part, and (*Robert Johnson, of the Borough of Manhattan, City of New York, in the State of New York*), party of the second part, witnesseth:

THAT WHEREAS, the party of the first part is indebted to divers persons in sundry sums of money which he is unable to pay in full, and is desirous of providing for the payment of the same so far as it is in his power by an assignment of all his property for that purpose;

NOW, THEREFORE, the said party of the first part, in consideration of the premises and of (*one dollar*) paid by the party of the second part upon the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto the party of the second part, his successors and assigns, all and singular the

By Individual

lands, tenements, hereditaments and appurtenances, goods, chattels, stocks, promissory notes, claims, demands, property and effects of every description belonging to the party of the first part, wherever the same may be, *except* such property as is by law exempt from levy and sale under an execution.

To have and to hold the same and every part thereof in trust for the uses and purposes following:

To take possession of the said property, and to sell the same with all reasonable dispatch and to convert the same into money, and also to collect all such debts and demands hereby assigned as may be collectible, and out of the proceeds of such sales and collections;

1. To pay and discharge all the just and reasonable expenses, costs and charges of executing this assignment, and of carrying into effect the trust hereby created, together with the lawful commissions of the party of the second part for his services in executing said trust.

2. To pay and discharge in full, if the residue of said proceeds is sufficient for that purpose, all the debts and liabilities now due, or to become due of said party of the first part, with all the interest moneys due or to become due thereon; and if the residue of said proceeds shall not be sufficient to pay all the said debts, liabilities and interest moneys in full, then to apply the said residue of said proceeds to the payment of said debts and liabilities ratably and in proportion.

And if, after the payment of all the costs, charges and expenses attending the execution of the said trust and the payment of all the said debts and liabilities in full there shall be any remainder or residue of said property or proceeds to repay and return the same to the said party of the first part, his executors, administrators and assigns.

And for the better and more effectual execution of these presents and of the trusts hereby created, the party of the first part does hereby make, constitute and appoint the party of the second part his true and lawful attorney, irrevocable with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trust hereby created, and to ask, demand, recover and receive of and from all, and every person or persons, all property debts and demands, due, owing and belonging to said party of the first part, and to give acquittances and discharges for the same; to sue, prosecute, defend and implead for the same, and execute, acknowledge and deliver all

By Partnership

necessary deeds, instruments and conveyances necessary or proper for the better execution of the trust hereby created; (and for any of the purposes aforesaid to make, constitute and appoint one or more attorneys under him and at his pleasure to revoke the said appointments, hereby ratifying and confirming whatever the said party of the second part or his substitute shall lawfully do in the premises).

And the said party of the first part hereby authorizes the said party of the second part to sign the name of the said party of the first part to any check, draft, promissory note or other instrument in writing, which is payable to the order of the said party of the first part, or to sign the name of the party of the first part to any instrument in writing whenever it shall be necessary so to do to carry into effect the object, design and purpose of this trust.

And the party of the second part does hereby accept the trust created and reposed in him by these presents and does covenant and agree with the party of the first part that he will faithfully and without delay execute the said trust according to the best of his skill, knowledge and ability.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

(JAMES LYMAN,) (SEAL.)

(ROBERT JOHNSON.) (SEAL.)

(Acknowledgments)

FORM No. 594

**General Assignment — By Partnership, of Firm and Individual
Property**

THIS INDENTURE, made the (10th) day of (April,) in the year one thousand nine hundred and (fifteen,) between (Russell Lowell,) residing at (16 East 67th street, in the Borough of Manhattan, City of New York; John Arts,) residing at (654 Madison avenue, in the same Borough and City;) and (Charles Simmons,) residing at (Mamaroneck, Westchester county, New York,) carrying on the business of (Manufacturing and selling linen collars and cuffs,) at (the City of Troy, in the State of New York,) under the firm name of (Lowell, Arts & Company,) parties of the first part, and (Roger Williams,) of the said (City of Troy,) party of the second part, witnesseth, that

By Partnership

WHEREAS, the said parties of the first part are justly indebted as copartners to sundry persons in divers and sundry sums of money, and being unable to pay the same in full are desirous of applying all the copartnership and their individual property and assets to the payment of their copartnership and individual debts:

NOW, THEREFORE, the said parties of the first part, in consideration of the premises and of one dollar paid by the party of the second part upon the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the party of the second part, his successors and assigns, all and singular the estate and property, real and personal, of every kind and nature and wheresoever the same may be, of said parties of the first part, which is now held or owned by them as such copartnership firm, as aforesaid,

TO HAVE AND TO HOLD the same and every part and parcel thereof, with the appurtenances, unto the party of the second part, his successors and assigns,

IN TRUST, NEVERTHELESS, for the following uses and purposes:

1. To receive and take possession of all and singular the estate and property above assigned, transferred and conveyed, or intended to be, and to collect and get in all bills, promissory notes, accounts, choses in action, claims, demands and moneys due or owing the said parties of the first part as such copartnership firm, and with all reasonable diligence to sell and dispose of the real and personal property hereinbefore conveyed and assigned, and convert the said assigned property and estate into money.

2. And out of the proceeds to pay and discharge all the just and reasonable expenses, costs and charges of executing this assignment and of carrying into effect the trust hereby created, together with the lawful commissions of the party of the second part for his services in executing said trust.

3. And out of the residue of said proceeds to pay and discharge in full all and singular the debts and liabilities now due or to become due of the parties of the first part as such copartnership, with lawful costs and interest, if the residue of said proceeds applicable thereto shall be sufficient for that purpose; and if the same be not sufficient, then the said party of the second part shall

By Partnership

apply such residue of said proceeds to the payment of said debts and liabilities in proportion to the respective amounts thereof.

4. With and out of the residue and remainder of the said proceeds, if any there shall remain after paying all the debts and liabilities of the parties of the first part as such copartnership, the party of the second part is directed to pay and discharge all the private and individual debts of the parties of the first part, or any of them, whether due or to grow due, provided the amount of the individual debts of each of the said parties of the first part does not exceed the portion of any surplus which may remain after paying all the copartnership debts as aforesaid to which he may be entitled; and if the amount of the individual debts of any of the parties of the first part should exceed his interest in the said surplus, then his said interest is to be divided *pro rata* amongst his individual creditors in proportion to the amounts of their respective demands, it being understood that no part of the said surplus to which any of the parties of the first part may be respectively entitled after the payment of the copartnership debts as aforesaid is to be made liable for the individual debts of any of the other parties of the first part, and

WHEREAS, the said parties of the first part are individually justly indebted to sundry persons in divers and sundry sums and are respectively unable to pay the same in full, and are respectively desirous of making an equitable distribution of their property and effects amongst their creditors:

NOW, THEREFORE, the said parties of the first part, in consideration of the premises and of one dollar to each of them in hand paid by the party of the second part upon the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have each granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the party of the second part, his successors and assigns, all and singular the estate and property, real and personal, of every kind and nature, and wheresoever the same may be of each of the said parties of the first part which is now held or owned by them as their separate and individual property or estate.

TO HAVE AND TO HOLD the same and every part and parcel thereof, with the appurtenances, unto the party of the second part, his successors and assigns, in trust, nevertheless, for the following uses and purposes:

By Partnership

5. To receive and take possession of all and singular the estate and property last above assigned and conveyed, or intended so to be, and to collect and get in all bills, promissory notes, accounts, choses in action, claims, demands and moneys due or owing to the said parties of the first part as individuals, and with reasonable diligence to sell and dispose of the real and personal property last hereinbefore conveyed and assigned, and convert the said assigned property and estate into money.

6. And out of the proceeds to pay and discharge all the just and reasonable expenses, costs and charges, of executing this assignment and carrying into effect the trust hereby created, together with the lawful commissions of the party of the second part for his services in executing said trust.

7. And out of the residue of the said individual estates and property, and proceeds thereof, the party of the second part is directed to pay and discharge all the private and individual debts of the parties of the first part, or any of them, whether due or to grow due, as follows:

To apply the proceeds of the estate and property of each of the said parties of the first part to the payment of the individual debts of each of the parties of the first part so that no part of the individual property or estate of the parties of the first part shall be devoted to the payment of the individual debts of any of the other parties of the first part; and if the residue of said proceeds of the individual estate and property of the parties of the first part, or any of them, shall not be sufficient to pay all the individual debts and liabilities of the said parties or party, with lawful costs and interest, as hereinbefore provided, then to apply the said residue of said proceeds to the payment of the said debts and liabilities ratably and in proportion to the respective amounts thereof. And if the individual property of the parties of the first part, or any of them, shall be more than sufficient to pay their respective individual debts and liabilities, then to apply any surplus that may remain to the payment and liquidation of any balance of the copartnership debts which may remain unpaid out of the proceeds of the copartnership property hereinbefore assigned; said surplus to be applied to the payment and liquidation of the said copartnership debts as hereinbefore provided.

8. And if, after the payment of all the costs, charges and expenses attending the execution of the trusts herein created and the

By Partnership

payment of all the debts and liabilities of the said parties of the first part as such copartnership and as individuals, in full, there shall be any remainder or residue of the proceeds or property hereinbefore assigned, to pay and return the same to the parties of the first part, their executors, administrators and assigns, according to their respective rights thereto.

And for the better and more effectual execution of these presents and of the trusts hereby created, the parties of the first part do hereby make, constitute and appoint the party of the second part their true and lawful attorney irrevocable, with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trusts hereby created, and to ask, demand, recover and receive of and from all and every person or persons all property, debts and demands due, owing and belonging to said parties of the first part, or each or any, and to give acquittances and discharges for the same; to sue, prosecute, defend and implead for the same, and to execute, acknowledge and deliver all necessary deeds, instruments and conveyances.

And the said parties of the first part do hereby authorize the said party of the second part to sign or indorse their names or the copartnership name of the parties of the first part to or upon any check, draft, promissory note, or other instrument in writing for the payment of money which is payable to the order of the parties of the first part in their copartnership name, or otherwise, and to sign their names or the said copartnership name to any instrument in writing of any name, kind or nature, which may be necessary to more fully carry into effect the object, design and purpose of this trust.

And the party of the second part does hereby accept the trust created and reposed in him by these presents, and does covenant and agree with the parties of the first part that he will faithfully and without delay execute the said trust according to the best of his skill, knowledge and ability.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written:

(*RUSSELL LOWELL*,) (L. S.)

(*JOHN ARTS*,) (L. S.)

(*CHARLES SIMMONS*,) (L. S.)

(*ROGER WILLIAMS*.) (L. S.)

(Acknowledgments)

By Corporation

FORM No. 595

General Assignment for Benefit of Creditors — Corporation

THIS INDENTURE, made this (4th) day of (April, 1916,) by and between the (*Specialty Baking Company, Inc.*,) a domestic corporation duly incorporated and existing under the laws of the State of (*New York*,) and having its principal place of business at (*56 South Fifth Avenue, City of Mount Vernon, County of Westchester and State of New York*,) of the first part, and (*John Everett*) of (*73 South Broadway, in the City of White Plains*,) County of (*Westchester*,) and State of (*New York*,) of the second part, witnesseth:

WHEREAS, the said party of the first part has carried on, and is engaged in the business of (*manufacturing, buying, selling and dealing in bread and bread stuffs, biscuits, crackers, cakes, pies, pastry, ice cream, confectioneries and other food products*,) and such other lawful business incidental to all or any of the above mentioned objects as are necessary and proper; and

WHEREAS, the said party of the first part is justly indebted to various and certain individuals, corporations and co-partnerships, and being unable to pay all of its said debts is, therefore, desirous of making a just and fair distribution of its property and effects among its said creditors; and

WHEREAS, at a special meeting of the Board of Directors of the said party of the first part, due notice having been given, held at the office and the principal place of business of the said party of the first part at (*56 South Fifth avenue*,) in said (*City of Mount Vernon*,) on the (*first*) day of (*April, 1916*,) a resolution was duly offered and adopted wherein and whereby the (*President*) and (*Secretary*) of said party of the first part were authorized and directed to execute and deliver to the party of the second part an assignment of all the estate of said party of the first part, both real and personal, for the benefit of its creditors;

NOW, THEREFORE, THIS INDENTURE WITNESSETH; that the said party of the first part in consideration of the premises and of the sum of One Dollar (\$1.00) paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, released, assigned, transferred, set over and conveyed, and by these presents does grant, bargain and sell, release, assign, transfer, set over and convey

By Corporation

unto the said party of the second part, his successors and assigns, all and singular the lands, tenements and hereditaments, with the appurtenances thereto, situate, lying and being within the State of New York, and also all the goods, chattels, credits, merchandise, bills, bonds notes, accounts, claims, demands, choses in action, stocks and evidences of debt and of property of every name, nature, kind and description whatever and wheresoever situate, of the said party of the first part, in possession or otherwise, except such articles as may be by law exempt from execution.

TO HAVE AND TO HOLD the same and each and every part and parcel thereof to the said party of the second part, his successors and assigns, in trust, nevertheless, to and for the following purposes, viz. : To take possession of the said property and to sell and dispose of the same with all reasonable diligence, either at public or private sale, and for the best prices that can be obtained therefor, and to convert the same into money; and also to collect such debts and demands hereby assigned as may be collectible, including the recovery of any amount that may be due from stockholders on unpaid capital stock issued to or subscribed for by them; and with and out of the proceeds of such sales and collections,

1. To pay and discharge all the just and reasonable expenses, costs and charges of executing this assignment and of carrying into effect the trust hereby created, including the lawful commissions of the party of the second part for his services in executing the said trust; including also the reasonable charges and compensation of one or more agent or agents, attorney or attorneys; and also to obtain and pay for suitable and reasonable insurance on any buildings and property hereby assigned and conveyed; and all taxes now due and to grow due upon any real estate hereby conveyed until said property shall be sold and disposed of.

2. To pay and discharge the wages or salaries actually owing to the employees of the said party of the first part at the time of the execution of this assignment for services rendered within three months prior to the execution of said assignment, not exceeding Three Hundred Dollars (\$300.00) to each employee, and should the assets of the said assignor not be sufficient to pay in full all the claims preferred pursuant to the statutes of the State of New York in such case made and provided, they shall be applied to the payment of the same pro rata to the amount of each such claim.

By Corporation

3. To pay and discharge in full, if the residue of said proceeds is sufficient for that purpose, all debts and liabilities now due or to become due from the said party of the first part, and if the residue of said proceeds shall not be sufficient to pay said debts and liabilities and interest thereon in full, then to apply the same so far as they will extend to the payment of said liabilities and debts and interest thereon proportionately to their respective amounts without any priority or preference whatsoever; and if after the payment of all the costs, charges and expenses attending the execution of said trust and the payment and discharge in full of all the lawful debts owing by the said party of the first part, there shall be any surplus of the said proceeds remaining in the hands of the party of the second part, then to repay such surplus to the party of the first part, its successors or assigns.

And for the better and more effectual execution of these presents, and of the trusts hereby created and reposed, the party of the first part doth hereby make, constitute and appoint the party of the second part its true and lawful attorney irrevocable, with full power and authority to do, transact and perform all acts, deeds, matters, and things which may be necessary in the premises, and to the full execution of the said trust; and for the purposes of said trust to ask, demand, recover, and receive of and from all and every person and persons, all the property, debts, and demands belonging and owing to the party of the first part, and to give acquittances and discharges for the same; and to sue, prosecute, defend, and implead for the same; and to execute, acknowledge, and deliver all deeds, and instruments of conveyance necessary or proper for the better execution of the trust hereby created; and also for the purposes aforesaid, or for any of them, to make, constitute, and appoint one or more attorneys under him, and at his pleasure to revoke the same; hereby ratifying and confirming whatever the said party of the second part or his substitute shall lawfully do in the premises.

And the party of the second part doth hereby accept the trust created and in him reposed by these presents, and doth for himself, his heirs, executors, and administrators, hereby covenant and agree to and with the said party of the first part, its successors and assigns, that he, the said party of the second part, will honestly and faithfully, and without delay, execute the same according to the best of his skill, knowledge, and ability.

By Corporation

IN WITNESS WHEREOF, the party of the first part has caused its corporate seal to be hereunto affixed, and these presents to be subscribed by its (*President, attested by its Secretary,*) and the party of the second part has hereunto set his hand and seal, this (*fourth*) day of (*April,*) in the year one thousand nine hundred and (*sixteen.*)

(*SPECIALTY BAKING COMPANY, INC.,*)

(By *Oliver Murray,*)

(*President.*)

(*JOHN EVERETT,*) (L. S.)

(Corporate Seal.)

Attest:

(*John C. Piney,*)

Secretary.

(Acknowledgments)

GENERAL RELEASES

FORM No. 596

General Release (Usual Form)*

KNOW ALL MEN BY THESE PRESENTS, that (*I, Thomas Davis,*) of (*the Borough of Manhattan, in the City of New York,*) for and in consideration of the sum of (*one dollar,*) lawful money of the United States, to me in hand paid by (*Robert Reed,*) of (*the same Borough and City,*) the receipt whereof is hereby acknowledged, have remised, released and forever discharged, and by these presents do for (*myself*) and (*my*) heirs, executors and administrators, remise, release and forever discharge the said (*Robert Reed, his*) heirs, executors and administrators, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever in law or in equity, which against the said (*Robert Reed I*) ever had, now have, or which (*I,*) or (*my*) heirs, executors or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, and more particularly from (*any cause of action, claim or demand, which I, or my executors, administrators or assigns, may have against the said Robert Reed by reason of his indorsement upon a certain promissory note for the sum of fifty dollars, made by Ralph Waldo, payable to me or my order and bearing date January 2, 1916.*)

IN WITNESS WHEREOF, (*I*) have hereunto set (*my*) hand and seal the (*tenth*) day of (*April,*) in the year of our Lord one thousand nine hundred and (*sixteen.*)

(*THOMAS DAVIS.*) (SEAL.)

(Acknowledgment)

* Section 840 of the Code of Civil Procedure provides that a seal on an executory instrument is only presumptive evidence of a sufficient consideration, which may be rebutted as if the instrument were not sealed.

It has been held, however, that this section has no application to a release under seal but that as to this instrument the rule of the common law, to the effect that a seal is conclusive evidence of consideration still prevails. *Gray v. Barton*, 55 N. Y. 68, at p. 71; *Finch v. Simon*, 61 App. Div. 139 at p. 141, and see as to wording of restriction 190 N. Y. 413.

Reserving Rights Against Some Joint Debtors

FORM No. 597

General Release — (Short Form)

KNOW ALL MEN BY THESE PRESENTS, that (*I, Richard Rivel,*) residing at (*No. 204 West 96th Street, Borough of Manhattan, New York City,*) in consideration of the sum of one dollar lawful money of the United States, to (*me*) in hand paid by (*Marvel Machine Company*) and of other valuable considerations, the receipt whereof is hereby acknowledged, do hereby, for (*myself*) and (*my*) heirs, executors, administrators and assigns, remise, release and forever discharge the (*Marvel Machine Company, its successors and assigns,*) from any and every right and cause of action, claim or demand of whatsoever kind, nature or description, at law or in equity or created by statute, which (*I*) now have or which (*I, or my*) heirs, executors or administrators can hereafter have against said (*Marvel Machine Company, its successors and assigns*) arising out of (*any injury sustained by me to my person, health, and faculties or property and estate including any damage, detriment, hurt or impairment, physical or mental or pecuniary thereto from any cause directly or indirectly connected with my employment by the Marvel Machine Company.*)

IN WITNESS WHEREOF, (*I*) have hereunto set (*my*) hand and seal this (15th) day of (*August, 1916.*)

(*RICHARD RIVEL.*)

(Acknowledgment)

FORM No. 598

General Release*—Reserving Rights Against Some of Persons
Jointly Liable (Covenant Not to Sue)

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS (*Robert Reed*) and (*John Power*) are jointly indebted to the un-

* This release is executed according to the provisions prevailing in several States, by which a joint debtor may make a separate composition with his creditor, such composition to discharge the debtor making it, and him only. A member of a partnership cannot thus compound for a partnership debt, until the partnership has been dissolved. Such release does not impair the creditor's right of action against any other joint debtor. §§ 230-231, Debtor and Creditor Law.

Reserving Rights Against Some Joint Debtors

dersigned (*Thomas Davis as makers of a joint promissory note for \$1,000 bearing date December 8th, 1915, payable 30 days after the date thereof*) and

WHEREAS, the said (*Robert Reed*) has made a separate composition and settlement with the undersigned of his liability upon said claim,

NOW, THEREFORE, (*I, Thomas Davis,*) of (*the Borough of Manhattan, in the City of New York,*) for and in consideration of the sum of (*one dollar,*) lawful money of the United States, to (*me*) in hand paid by (*Robert Reed,*) of (*the same Borough and City,*) the receipt whereof is hereby acknowledged, pursuant to the statute in such case made and provided, has remised, released and forever discharged, and by these presents do for (*myself*) and (*my*) heirs, executors and administrators, remise, release and forever discharge the said (*Robert Reed, his*) heirs, executors and administrators, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands, whatsoever, in law or in equity, which against the said (*Robert Reed I*) ever had, now have or which (*I,*) or (*my*) heirs, executors or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, and more particularly from any cause of action, claim or demand, which (*I,*) or (*my*) executors, administrators or assigns, may have against the said (*Robert Reed,*) upon (*said note*) expressly excepting and reserving and not hereby intending to discharge or release or in any way affect any right, demand, claim or cause of action which (*I*) or (*my*) executors, administrators or assigns may or can have against the said (*John Power*) or any other person upon said (*note*) claim, liability or demand by reason of the facts above set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the (*tenth*) day of (*April,*) in the year of our Lord one thousand nine hundred and (*sixteen.*)

(*THOMAS DAVIS.*) (SEAL.)

(Acknowledgment)

Mutual

FORM No. 599**Mutual Release**

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, Greeting: Know ye that whereas a settlement is being made between (*HENRY HOBBS, as administrator of John Hobbs, deceased,*) and (*ARTHUR HOBBS, of Montreal, Canada, as surviving partner of the firm of Hobbs Brothers and Watt, of which firm said deceased was a member, and said administrator*) before transferring to (*Arthur Hobbs,*) the interest of the estate of said deceased in said partnership desires a release from (*Cross, Hobbs & Co., Ltd., of London, Eng.,*) from all claims of whatsoever kind or nature which may exist in favor of (*Cross, Hobbs & Co., Ltd.,*) against (*the estate of said John Hobbs,*) and especially by reason of a certain (*agreement, dated 3d day of March, 1912, made between Arthur Hobbs and John Hobbs trading as Hobbs Bros. & Cross of the one part and Cross, Hobbs & Co., Ltd., of the other part.*)

NOW, THEREFORE, said (*Cross, Hobbs & Co., Ltd., of London, Eng.,*) for and in consideration of the sum of one dollar, lawful money of the United States, and other valuable consideration, to (*it*) in hand paid by (*Henry Hobbs, as administrator of the goods, chattels and credits which were of said John Hobbs, late of the County of Kings, deceased,*) the receipt whereof is hereby acknowledged, has remised, released and forever discharged and by these presents does for (*itself and its successors*) remise, release and forever discharge the said (*Henry Hobbs, as administrator of all and singular the goods, chattels and credits which were of said John Hobbs, deceased, and also the estate of said John Hobbs,*) of all and from all, and all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, whatsoever in law or in equity, which against said (*Arthur Hobbs, as administrator of all and singular the goods, chattels and credits which were of said John Hobbs, deceased, or the estate of said John Hobbs, or the said John Hobbs,*) ever had, now has or which (*it*) or (*its successors*) hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever

Mutual

from the beginning of the world to the day of the date of these presents, [excepting, etc., * * *.] And the said (*Arthur Hobbs, as administrator as aforesaid,*) for, and in consideration of, the sum of one dollar, lawful money of the United States, and other valuable considerations, to (*him*) in hand paid by (*Cross, Hobbs & Co., Ltd.,*) the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and does by these presents for (*himself and his successors,*) remise, release, and forever discharge the said (*Cross, Hobbs & Co., Ltd.,*) of all and from all, and all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, demands, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which against said (*Cross, Hobbs & Co., Ltd., he as such administrator as aforesaid*) ever had, now has, or which (*he or his successors*) hereafter can, shall or may have for, upon or by reason of any manner, cause or thing whatsoever, from the beginning of the world to the day of the date of these presents. [Excepting, etc., * * *.]

IN WITNESS WHEREOF, the said (*Cross, Hobbs & Co., Ltd.,*) has caused its corporate seal to be hereunto affixed and these presents to be signed by its (*president,*) and said (*Arthur Hobbs as administrator as aforesaid,*) has set hereunto his hand and seal, this (*second*) day of (*November,*) in the year one thousand nine hundred and (*sixteen,*) in duplicate.

(*CROSS, HOBBS & CO., Ltd.,*)

By (*Louis Watson,*) as
(*President.*)

(*HENRY HOBBS,*)

(*As Administrator of the goods,
chattels, and credits of John
Hobbs, deceased.*)

(*Acknowledgments*)

FORM No. 600

Release of General Guardian and Surety by Minor on Reaching Majority

KNOW ALL MEN BY THESE PRESENTS: That I (*Michael Mathews*,) of (712 East One Hundred and Twenty-First street, Borough of Manhattan, City of New York,) do hereby acknowledge the receipt from (*Margaret Mathews*,) my General Guardian, of the sum of (*ninety*) dollars, which amount I am satisfied from an examination I have made of the proceedings and accounts of my said General Guardian, is the correct amount due to me out of my estate as a minor and which I do hereby acknowledge to be payment in full of the entire amount which I am entitled to receive from (*Margaret Mathews*) as General Guardian of my person and estate, and for and in consideration of the foregoing and of the sum of One Dollar, to me in hand paid by the (*Guardian Guaranty Company*,) I do hereby, for myself, my heirs, executors and administrators, release and forever discharge (*Margaret Mathews*) and her legal representatives and the said (*Guardian Guaranty Company*,) its successors and assigns, from all claims or demands whatsoever, in law or in equity, which I ever had, now have, or which I or my heirs, executors or administrators hereafter may have against the said (*Margaret Mathews*,) arising out of her acts and proceedings as General Guardian of my person and property or against said (*Company*,) by reason of the said (*Company*) having been surety upon the bond of (*Margaret Mathews*) as General Guardian of my person and estate.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the (*twenty-fifth*) day of (*September*,) one thousand nine hundred and (*sixteen*,)

(*MICHAEL MATHEWS*,)

In presence of

(*ERNEST EVERETT*,)

(Acknowledgment)

Of Guardian and Surety

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*Margaret Mathews*) being duly sworn, deposes and says that (*she*) is the (*mother*) of and was the General Guardian of the person and property of (*Michael Mathews*) the person named in and who executed the within release.

That the said (*Michael Mathews*) was born at (*Rochester, N. Y.*) on the (*twenty-first*) day of (*September*,) in the year (1895) and became of the age of twenty-one years on the (*twenty-first*) day of (*September*, 1916.)

That this affidavit is made for the purpose of inducing the Surety upon the bond of deponent as General Guardian of said infant to act in reliance upon it.

(*MARGARET MATHEWS.*)

Sworn to before me, this }
(*25th*) day of (*September*, 1916.) }

(*CLARE L. REID*,)

Notary Public,

(*N. Y.*) County No. (670.)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*Michael Mathews*,) being duly sworn, says that (*he*) is the (*son*) of (*Margaret Mathews*, *his*) General Guardian, and became twenty-one years of age on the (*twenty-first*) day of (*September*,) 1916;) that (*he*) is satisfied from an examination which (*he*) has made of the proceedings and accounts of said (*Margaret Mathews*) as (*his*) General Guardian, that (*she*) has faithfully performed (*her*) duty and has fully accounted for everything that has or should have come into (*her*) hands and that (*he*) deems it to be to (*his*) interest that a judicial settlement of the accounts of said (*Margaret Mathews*) as deponent's General Guardian be dispensed with and that said General Guardian and the (*GUARDIAN INDEMNITY COMPANY*) of (*New York*,) Surety on (*her*) bond be released from any and all liability under said bond.

(*MICHAEL MATHEWS.*)

Sworn to before me, this }
(*25th*) day of (*September*, 1916.) }

(*HARRY HALL*,)

Notary Public,

(*New York*) County.

FORM No. 601

General Release by Guardian Ad Litem

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, GREETING: KNOW YE, That (*I, John Doe,*) Guardian ad Litem of (*Richard Roe,*) appointed by order of the (*Supreme*) Court of (*the State of New York*) by order made and entered (*September 29, 1916,*) for and in consideration of the sum of (*Five hundred*) dollars lawful money of the United States of America to me in hand paid by (*John Smith,*) the receipt whereof is hereby acknowledged, and pursuant to the leave and authority given me by order of (*the said Supreme Court*) made and entered in (*the action*) entitled (*Richard Roe, by his Guardian, John Doe, against John Smith, on October 26, 1916,*) a certified copy of which order is hereto annexed, have remised, released, and forever discharged, and by these presents do as such Guardian ad Litem and for my (*successor,*) remise, release, and forever discharge the said (*John Smith,*) his heirs, executors and administrators, of and from all, and all manner of action and actions, cause and causes of action, suits, damages, judgments, executions, claims and demands whatsoever, in law or in equity which against the said (*John Smith,*) the said (*Richard Roe*) ever had, now has or which his heirs, executors or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

IN WITNESS WHEREOF, (*I*) have hereunto set (*my*) hand and seal the (*twenty-eighth*) day of (*October*) in the year one thousand nine hundred and (*sixteen.*)

(*JOHN DOE.*) (L. s.)
as Guardian ad Litem of
(*RICHARD ROE.*)

Signed, sealed and delivered
in the presence of
(*MARY SMALL.*)

(*JAMES BAILEY,*)
Notary Public,
(*New York*) County.

(ACKNOWLEDGMENT)

LEASES

FORM No. 602

Lease of Apartment

THIS AGREEMENT made the (*twenty-fourth*) day of (*September,*) in the year one thousand nine hundred and (*sixteen,*) between (*Robert Cary*) of (*the Borough of Manhattan, City of New York,*) party of the first part, hereinafter designated as the lessor; and (*Henry Archer*) of (*the same place,*) party of the second part, hereinafter designated as the lessee, Witnesseth that the lessor has agreed to let and hereby does let and demise to the lessee, and the lessee has agreed to take and hereby does take from the lessor the apartment designated as (*No. 62*) on the (*6th*) floor of the building known as (*The Cary Arms, No. 42 West 52d street, in the Borough of Manhattan, City of New York,*) for the term of (*two years,*) commencing on the (*1st*) day of (*October, 1916,*) and ending on the (*30th*) day of (*September, 1918,*) at the annual rent of (*two thousand*) (*2000*) dollars, it being hereby expressly understood and agreed that the premises so demised shall be occupied only by the lessee and by the members of (*his*) family as a private dwelling apartment, and for no other use or purpose whatever.

And the said lessee hereby covenants and agrees to pay unto the said lessor rental, in equal monthly payments, in advance, on the first day of every month during said term.

This lease is granted and accepted upon the foregoing and upon the following covenants and conditions and subject to the following restrictions, to all and every one of which the lessee consents and hereby expressly covenants and agrees with the lessor to keep and perform.

First. That the lessee shall well and truly pay to the lessor the yearly rent herein reserved on the days and in the manner hereinbefore prescribed for the payment thereof.

Second. That the lessee shall not assign this lease nor underlet the demised premises, or any part thereof, or make any alterations,

Apartment

additions or improvements therein without the written consent of the lessor or (*his*) agents first endorsed hereon; shall not do, perform or suffer in or upon the said premises any act or thing deemed extra hazardous on account of fire; shall comply with all the rules and regulations of the board of health and city ordinances applicable to said premises; and shall not use the same, or any part thereof, or permit the same to be used for any purpose other than for the personal occupation thereof by the lessee, and family, as hereinbefore provided.

And it is expressly stipulated and agreed that the lessor's or (*his*) agent's consent shall not be construed as a waiver of the duty of the lessee, (*his*) personal representative or assigns, to obtain from the lessor consent to any other or subsequent act of assignment or subletting, or as modifying or limiting the rights of the lessor under the foregoing covenant by the lessee not to assign or sublet without such consent.

Third. That the lessee shall take good care of the demised premises and of the pipes, fixtures, appliances and appurtenances therein contained; shall suffer no waste in driving picture or other nails into the walls or wood-work of the said premises or in allowing the same to be driven, or otherwise; shall at his own cost and expense make and do all repairs required to walls, ceilings, paper, plumbing works, ranges, pipes and fixtures belonging thereto whenever damage or injury to the same shall have resulted from misuse or neglect; and at the end or other expiration of the term, shall deliver up the premises in good order and condition.

Fourth. That the lessor shall not, at any time or in any event, be liable for any damage to property in the demised premises or in the building in which the said premises are situated occasioned by leakage of water, steam or gas, from or into any part of the said building, or arising from any other cause.

Fifth. That the lessee shall permit the demised premises to be shown to applicants during four months next before the expiration of this lease. If the lessee shall not be personally present at any time during said period to open and permit the entry into said premises, or if at any time an entry shall be deemed necessary for the inspection or protection of the property, or for making any repairs or decorations, the lessor or (*his*) agents may enter into the same by means of a master key or otherwise without being liable to any prosecution, claim or cause of action by reason

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thereof, and without in any manner affecting the obligations of this lease. It is, however, expressly understood and agreed that the right and authority hereby reserved does not impose, nor does the lessor assume by reason thereof, any responsibility or liability whatsoever for the care, maintenance or supervision of the demised premises or any of the pipes, fixtures, appliances or appurtenances therein contained or therewith in any manner connected.

Sixth. That the lessee has read the rules and regulations hereto subjoined and made a part hereof, and hereby agrees to abide by and conform to the same and to such further reasonable rules and regulations as the lessor may from time to time make or adopt for the care, protection and government of the building and the general comfort and welfare of its occupants.

Seventh. The lessor will furnish to the lessee without additional charge, elevator service, steam heat during the winter months, and hot and cold water.

It is mutually understood and agreed, in case it shall become necessary at any time in the judgment of the lessor, to omit or suspend the operation of the elevators, the heating apparatus or other portion of the mechanical service of the said building, in consequence of accident or by reason of pendency of work incident to the repair or reconstruction of the mechanical equipment thereof, including elevators, electric equipment, heating apparatus, plumbing service, boilers and other machinery therein contained, that the lessor shall be at liberty to omit or suspend such operations, or any of them, until the necessary repairs or reconstruction, as the case may be, shall have been made and completed, without affecting or in any way modifying the obligations and covenants herein contained on the part of the lessee, or rendering the lessor liable for any damage or offset by reason thereof. In any such case, however, the lessor shall use due expedition and diligence in undertaking and completing any necessary works of repair or reconstruction.

Eighth. That the lessee agrees at (*his*) own cost and expense to make good and repair all damage to the demised premises and to the fixtures and appurtenances therein contained, or to the property in said building belonging either to the lessor or to other

tenants, caused by the acts or omissions of the lessee, or the members of his family, his servants or agents, including particularly any and all damage caused by neglect or misuse of the water appliances, gas fixtures and steam radiators or connections subject to the control of the lessee.

Ninth. That the lessee will, in case of fire, give immediate notice thereof to the lessor, who shall thereupon cause the damage to be forthwith repaired, unless the premises be so damaged that the lessor shall decide to rebuild, in which case, but not otherwise, the term shall cease, and the accrued rent be paid up to the time of the fire. If the premises demised, or any part thereof, are so far injured by fire as to be rendered untenable, but are nevertheless repaired by the lessor, then an abatement will be made from the rent corresponding with the time during which, and the extent to which, the same may have been untenable.

Tenth. In case of default on the part of the lessee in any of the covenants of this lease, or if the demised premises become vacant, the lessor may re-enter, without notice, or by means of summary proceedings, or in any other method prescribed by law, and resume possession and relet the premises in (*his*) own name, for the account of the lessee without terminating this lease or in any manner affecting the obligations of the lessee to pay as damages the amount herein covenanted to be paid as rent. In this event, however, there shall be credited to the lessee the amount received from said reletting, after deducting the expenses of such proceedings as may have been necessary in order to regain possession, as well as the cost of reletting the premises; and the execution of a new lease for the said premises shall not terminate the lessee's liability or obligations hereunder, which shall in all events remain in full force and effect for the full term of this lease. The lessee having once vacated, may not re-enter without the consent of the lessor. No act or thing done by any officer or agent of the lessor, during the term hereby granted, shall be deemed an acceptance of a surrender of said premises, and no agreement of surrender or to accept a surrender of said premises shall be valid unless the same be made in writing, by the lessor or (*his*) authorized agent.

In case of re-entry by the lessor or (*his*) agents in any manner hereinbefore prescribed, the amount of damages or deficiency shall become due and payable each month as soon as the amount of said

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damage or deficiency shall have been ascertained in the manner herein provided, and separate actions may be maintained each month to recover the damage or deficiency then due, without waiting until the end of the term; and no notice or demand shall be necessary in order to maintain such action.

Eleventh. It is hereby understood and agreed that the character of the occupancy of the demised premises is a special consideration and inducement for the granting of this lease by the lessor to the lessee. It is therefore expressly agreed, in case the lessor or (*his*) agent shall deem any conduct on the part of the lessee or of the occupants for the time being of the demised premises to be objectionable and improper, that the lessor or (*his*) agents shall have full license and authority to terminate this lease and to re-enter and have full possession of said premises, either with or without legal process, on giving five days' previous notice of (*his*) intention so to do, and on tendering payment of a sum equal to the installment of rent which accrued on the first day of the then current month, in case such installment of rent shall then have been paid. Upon the expiration of said notice and upon tender of payment as aforesaid, the estate hereby granted and all right, title and interest therein on the part of the lessee shall cease and determine, and the lessor, (*his*) agents or assigns, shall be entitled to the immediate possession of said premises; and in consideration of the above letting, the lessee hereby covenants and agrees that the lessor and (*his*) agents shall not be liable for prosecution or for damages in resuming possession of the demised premises in the manner hereinbefore set forth.

Twelfth. The lessor shall furnish gratuitously for the accommodation of the lessee a room for the storage of trunks, and other articles. It is mutually understood and agreed, however, that such provision on the part of the lessor is gratuitous; that the lessor shall in no event be or become liable for loss or damage to property stored therein or for any other damage or injury thereto; and that the lessee will assume liability for any personal injury sustained either by the lessee or by the members of (*his*) household, (*his*) servants or employees, resulting in any way from the use or occupation of such store-room.

Thirteenth. That if the demised premises be in a building where the lessor shall desire to supply the electric current to the lessee, the lessee hereby agrees to use no other current than that

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supplied by the lessor and to pay therefor the same rate as is charged by the Public Service Corporations having the conduit in front of said building. However, the lessor shall furnish or cause to be furnished suitable meters and other necessary arrangements similar to those furnished by such Public Service Corporations. The charge for the electric current shall be paid for monthly, and the lessor reserves the right to discontinue such service if any such bill remains unpaid for 15 days after the presentation of the bill to the lessee. Also if the lessor so desires, the lessee agrees to pay a deposit as a guarantee that the bills will be paid in accordance with the terms of the contract, the amount to be returned with six (6%) per cent. interest thereon upon the termination of said contract, the surrender of the certificate of deposit and the payment in full of the indebtedness or to be applied to liquidation of the account.

Fourteenth. It is mutually understood that the telephone instrument in the demised premises is the property of the New York Telephone Company. Telephone service privileges may be exercised by the lessee upon condition that (*he*) shall and hereby (*does*) agree to pay therefor, in monthly installments, the regular charges for service to be determined by the lessor. Such service may be discontinued and withdrawn by the lessor in case the amount due by the lessee for tolls shall not be paid during the month in which the account therefor shall have been rendered. It is further mutually agreed that any such discontinuance of telephone service shall not in any way affect or modify the obligations of the lessee hereunder.

Fifteenth. That the lessee shall not at any time place or display in or upon the exterior of said building, or upon any part thereof, or in or upon any window of the demised premises, including the sills or ledges thereof, any signs, advertisements, illumination or projection, unless the style, size and location of the same shall have been first authorized and approved in writing by the lessor or (*his*) authorized agent. The lessee shall use only such shades in the front windows of the demised premises as shall have been either furnished or approved by the lessor.

Sixteenth. That on the last day of the said term, or on the sooner determination of the estate herein granted, the lessee shall peaceably and quietly leave, surrender and yield up unto the lessor all and singular the demised premises, together with all alterations, additions and improvements which may have been made by

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either of the parties hereto upon the premises, except movable furniture put in at the expense of the lessee.

Seventeenth. That the lessee accepts this lease subject and subordinate to the mortgage or mortgages now a lien upon the premises hereinabove described, and agrees that this lease shall be subject and subordinate to the lien of any other mortgage or mortgages which may at any time hereafter be secured by the lessor. And the said lessee agrees that (*he*) will, at any time hereafter, on demand execute any instruments, releases, or documents that may be required by any mortgagee or mortgagor for the purpose of subjecting and subordinating this lease to the lien of any such mortgage or mortgages, original or substituted, and in case of the failure of the lessee to execute said papers on demand, the lessor is hereby authorized as the attorney and agents of the lessee to execute such releases, instruments or other documents and in such event, the lessee hereby confirms and ratifies any such instruments so executed by virtue of this power of attorney.

Eighteenth. The parties mutually covenant and agree that these premises are leased upon the express condition that the term of this letting and hiring shall be deemed to be, and the same is hereby extended as between the parties hereto for the further term of year from the day of , 19.., at annual rental of \$....., payable in equal monthly payments in advance on the first day of every month during the said extended term, without deduction or concession, and upon terms, conditions and covenants identical in all respects with the terms, conditions and covenants of this lease, including the covenant contained in this paragraph for any future renewal or extension thereof, unless the lessee shall give notice to the lessor in writing on or before the first day of June next preceding the expiration of the then current term, of an intention to vacate and surrender the demised premises at the date of such expiration. Service by the lessee of such written notice by United States registered mail, postage prepaid, addressed to the landlord or his agents in charge of the demised premises, shall be sufficient.

It is further mutually covenanted and agreed, however, that the landlord shall have the right and is hereby expressly empowered to cancel and annul any renewal or extension of this lease by giving to the lessee at any time prior to the first day of July next preceding the expiration of the then current term,

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written notice of an intention so to do. Service of such notice by United States registered mail, postage prepaid, addressed to the lessee at the demised premises shall be sufficient.

AND the lessor hereby covenants and agrees that the lessee, on paying the said rents and sums above reserved and provided for, and performing each and every covenant, condition and agreement herein mentioned on his part, shall and may peacefully and quietly have, hold and enjoy the demised premises during the term aforesaid.

AND it is mutually understood and agreed that the covenants and agreements contained in the within lease shall be binding upon the parties hereto and upon their respective successors and legal representatives.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

(*ROBERT CARY*,) Owner.

By (*MODEL RENTING CO.*,

as his Agent.)

(SEAL.)

(*JAMES LAW*,) President.

(*HENRY ARCHER*.)

(SEAL.)

Sealed and delivered in the
presence of:

(*MARY SILL*.)

(Acknowledgment)

IN CONSIDERATION of the letting of the premises above mentioned to the above-named (*Henry Archer*) and the sum of one dollar to me in hand paid by (*Robert Cary*,) the lessor above named, (*I*) do hereby covenant and agree to and with the said (*Robert Cary*, *his*) heirs, executors, administrators and assigns, that if default shall at any time be made by the said (*Henry Archer*) in the payment of the rent or performance of any of the covenants above contained on his part to be paid or performed, (*I*) will well and truly pay the said rent, or any arrears thereof that remain due unto the said (*Robert Cary*,) also all damages that may arise in consequence of the breach or non-performance of said covenants, or any of them. (*I*) hereby waive notice of default in payment of said rent or any installment thereof, or notice of the breach or nonperformance of any of said covenants, and (*I*) also consent to the extension or extensions of time for the payment of any rent payable under such lease.

Rules and Regulations

IN WITNESS WHEREOF, (I) have hereunto set (my) hand and seal this (24th) day of (September, 1916.)

(ALLEN SCOTT.) (SEAL.)

Witness

(MARY SILL,)

RULES AND REGULATIONS

FOR THE MUTUAL BENEFIT OF OWNER AND TENANTS, AND AGREED TO BY BOTH PARTIES AS A PART OF THIS LEASE.

1. The sidewalks, halls, passages and stairways shall not be obstructed by any of the tenants or used by them for any other purpose than those of ingress to and egress from their apartments.

2. Floors, skylights and windows reflecting or admitting light into passageways or elsewhere in the building shall not be covered or obstructed by the tenants or their servants.

3. The water closets and water apparatus shall not be used for any purpose other than that for which they are constructed, and no sweepings, rubbish, rags or other improper articles shall be thrown therein. Any damage resulting from such misuse shall be borne by the tenant by whom or upon whose premises it shall have been caused.

4. No signs, advertisements or notice shall be painted or affixed upon any part of the building, outside or inside, nor shall any article be suspended outside of the building, or placed on the window-sills thereof, save with the consent, in writing, of the Lessor.

5. No tenant shall do or suffer or permit anything to be done in said premises, or bring or keep anything therein which will in any manner increase the rate of fire insurance on said building or property kept therein, or do or suffer or permit anything to be done which shall conflict with the laws, regulations, rules or ordinances of the Fire Department, Department of Buildings and Department of Health, or the New York Board of Fire Underwriters or any similarly constituted body.

6. No noisy or disorderly conduct, or any conduct annoying or disturbing to the occupants of the building shall be permitted in any part thereof. Practicing on any musical instrument before 8 A. M. or after 10 P. M. not allowed.

7. No dogs, or other domestic or wild animals, or birds, shall

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be taken into or kept in or about the building, save with the written consent of the Lessor, and any such consent shall be revocable by the Lessor at will and without notice.

8. Children shall not be allowed to play in the public halls, stairways or elevators, nor be permitted in the service elevators.

9. Nothing shall be thrown by the tenants, or by their servants, out of the windows or down the passages of the building, nor shall anything be hung out of the windows or placed on the window sills.

10. No servants employed by the Lessor shall be sent out of the building by any tenant at any time for any purpose.

11. No lamp, fixture or appliance of any sort shall be attached to or connected with the gas or electric fixtures within the demised premises except such as are furnished or approved by the Lessor, nor shall the steam pipes or radiators be moved or tampered with in any manner whatsoever.

12. All kitchen and market supplies, bundles, parcels, household goods, furniture and baggage or other deliveries of every kind are to be delivered in the basement, through the service entrance and are to be delivered through the dumbwaiters to the respective apartment, and the Lessor will not be held responsible for the loss or damage to any such property, notwithstanding such loss or damage may occur through the carelessness or negligence of the employees of the Lessor.

13. Servants, except nurses accompanying children, are to make entrance and exit to and from said building through the basement service entrance only. They will be allowed to ride in the elevator, but under no conditions are they to ride in the elevator with the tenants or their guests, but must wait for the car to return for them; and they will not be allowed to stand or loiter in the halls or on the stairs, or to be on the roof or in the basement, except on business. No beggars or peddlers will be allowed on premises under any consideration. Tradesmen are not allowed in main hall or the use of passenger elevators.

14. All employees of the management are forbidden to solicit custom for any tradesmen or to receive commission from any tradesmen or tenant, under penalty of dismissal. Tenants are requested to make their own bargains for supplies and to secure for themselves the most favorable terms. It is the urgent request of the owner that nothing shall be paid by way of commissions, tip or gratuity to any employee of the management.

Private Dwelling

15. Talking by servants or by employees, through elevator or dumbwaiter shaft, strictly prohibited. To avoid accidents, elevator and dumbwaiter doors must be kept closed when not in use.

16. The elevators shall be operated only by employees of the Lessor, and there shall be no interference whatever with the same by tenants, members of their families or their servants.

17. The days or hours (for the use of the roof) for drying clothes will be arranged by the Superintendent for the mutual convenience of all the tenants, and the days and hours so set aside are to be abided by.

18. All complaints to be made to the agent by written communication.

19. Passenger elevators to run at all hours, and service entrance will be open from 6:30 A. M. to 11 P. M.

20. The Lessor reserves the right to prescribe the weight and proper position of iron safes or other extra heavy articles, and the manner of placing them in position. The Lessee shall be liable for all damages to the building caused by taking in, moving or removing the same.

21. Hours for the collection of garbage and other refuse will be fixed, and are to be abided by. At no other time are the dumbwaiters to be obstructed by the tenants or their servants by the placing of any articles or refuse on same.

22. The Lessor reserves the right to make such additional rules from time to time as shall, in the opinion of the Lessor, be necessary for the safety, cleanliness and good of the premises, and for securing the comfort and convenience of all of the tenants.

FORM No. 603

Lease of Private Dwelling

THIS AGREEMENT, made the (*first*) day of (*October*) in the year one thousand nine hundred and (*sixteen*), between (*James Cary of the Borough of Manhattan, City of New York,*) of the first part, and (*Frank Black of the same place*) of the second part,

WITNESSETH, that the said (*party*) of the first part (*has*) agreed to Let, and hereby (*does*) Let, to the said (*party*) of the second part, and the said (*party*) of the second part (*has*) agreed

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to Take, and hereby (*does*) Take from the said (*party*) of the first part the premises known and numbered as (488 *Fifth Avenue*,) in the (*Borough of Manhattan, City of New York*,) State of New York, for the term of (*two years*,) to commence on the (1st) day of (*October, 1916*,) and to end on the (30th) day of (*September, 1916*,) to be occupied (*as a private dwelling*,) and not otherwise.

AND the said (*party*) of the second part hereby (*covenants*) and (*agrees*) to pay unto the said (*party*) of the first part for said demised premises, the (*annual*) rent or sum of (*twelve thousand* (\$12,000) *dollars in equal monthly installments of one thousand* (\$1,000) *dollars each on the first day of each and every month during said term*.)

That in addition to the rental so specified the tenant shall pay to the landlord the rent or charge, which may, during the demised term, be assessed or imposed for the water used or consumed in or on the said premises, whether determined by meter or otherwise, as soon as and when the same may be so assessed or imposed, and will also pay the expenses for the setting of a water meter in the said premises should the latter be required. If such rent or charge or expenses are not so paid the same shall be added to the next month's rent thereafter to become due.

AND the lessee covenants and agrees to use said rented premises as a private dwelling only for himself and his household and it is hereby understood and agreed that the character of the occupancy of the demised premises is a special consideration and inducement for the granting of this lease by the lessor to the lessee. It is therefore expressly agreed, in case the lessor or (*his*) agents shall deem any conduct on the part of the lessee or of the occupants for the time being of the demised premises to be objectionable and improper, that the lessor or (*his*) agents shall have full license and authority to determine this lease and to re-enter and have full possession of said premises, either with or without legal process, on giving five days' previous notice of (*his*) intention so to do, and on tendering payment of a sum equal to the installment of rent which accrued on the first day of the then current month, in case such installment of rent shall then have been paid. Upon the expiration of said notice and upon tender of payment as aforesaid, the estate hereby granted and all right, title and interest therein on the part of the lessee shall cease and determine and the

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lessor, (*his*) agents or assigns, shall be entitled to the immediate possession of said premises; and in consideration of the above letting, the lessee hereby covenants and agrees that the lessor and (*his*) agents shall not be liable for prosecution or for damages in resuming possession of the demised premises in the manner hereinbefore set forth.

That if the said premises, or any part thereof, shall become vacant during the said term, the said (*party*) of the first part, or (*his*) representative may recover possession of the same either by force, summary proceedings or otherwise, without being liable to any prosecution therefor; and re-let the said premises as the agent of the said (*party*) of the second part and receive the rent thereof, applying the same first to the payment of such expense as (*he*) may be put to in re-entering, and then to the payment of the rent due by these presents; and the balance (if any) to be paid over to the said (*party*) of the second part, who shall remain liable for any deficiency.

AND the said (*party*) of the second part hereby further (*covenants*) that if any default be made in the payment of the said rent, or any part thereof, at the times above specified, or if default be made in the performance of any of the covenants or agreements herein contained, the said hiring, and the relation of landlord and tenant, at the option of the (*party*) of the first part, shall wholly cease and determine; and the said (*party*) of the first part shall and may re-enter the said premises, and remove all persons therefrom.

AND will also pay (*the water rate,*) and will keep the plumbing work, pipes, glass and the premises generally in repair, and will surrender them at the expiration of the said term, in as good state and condition as reasonable use and wear thereof will permit, and the tenant shall keep the area, sidewalk and gutter in front of the demised premises free from snow, ice and other obstructions, and shall not encumber nor obstruct the same, nor the hallways, yard or any other portion of said premises, nor allow the same to be obstructed or encumbered in any manner.

AND the said (*party*) of the second part (*covenants*) that (*he*) will not assign this lease, nor let or under-let the whole, or any part of the said premises, or make any alteration therein without the written consent of the said (*party*) of the first part, under the penalty of forfeiture and damages; and that (*he*) will not occupy

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or use the said premises, nor permit the same to be occupied or used for any business deemed extra hazardous on account of fire or otherwise, without the like consent, under the like penalty.

AND the said (*party*) of the second part further (*covenants*) that (*he*) will permit the said (*party*) of the first part or (*his*) agent to show the premises to persons wishing to hire or purchase, and on and after the first day of (*July*) next preceding the expiration of the term, will permit the usual notice of "To Let" or "For Sale" to be placed upon the walls or doors of said premises, and remain thereon without hindrance or molestation.

AND it is further agreed between the parties to these presents, that in case the building hereby leased shall be partially damaged by fire the same shall be repaired as speedily as possible by the (*party*) of the first part; that in case the damage shall be so extensive as to render the building untenable, the rent shall cease until damages be repaired provided the damage be not caused by the carelessness or negligence of the (*party*) of the second part, (*his*) agents or servants. If the building be so damaged that the owner shall decide to rebuild, the term shall cease, the premises be surrendered, and the accrued rent be paid up to the time of the fire.

AND the said party of the second part hereby further covenants to respect and comply with all the ordinances and requirements of the Board of Health, and of all local and municipal authorities, and to protect and save the said party of the first part harmless from any injury or penalty arising from the disregard of the same, and said party of the second part further covenants to respect and comply with all rules and regulations of the (*New York Board of Fire Underwriters or any similarly constituted body,*) and that in case of his failure so to do the party of the first part shall have the right to cancel this lease and terminate the estate hereby granted upon giving five days' notice in writing of his intention so to do and upon tendering payment of a sum equal to the installment of rent which accrued on the first day of the then current month in case such installment of rent shall then have been paid. If the whole or any part of the premises hereby demised, shall be taken by any competent authority for any public use or purpose, then the term hereby granted shall at the option of the landlord cease from the time when possession of the part so taken shall be required for such public purpose, and without

Private Dwelling

apportionment of award, the current rent, however, in such case to be apportioned. This lease shall be subject and subordinate to the lien of any mortgage or mortgages of record now, or which may hereafter be placed against said premises and the recording of said mortgage or mortgages shall be prior in lien to this lease, irrespective of the date of recording; and the tenant agrees to execute any instrument without cost, which may be deemed necessary to further effect the subordination of this lease to any such mortgage or mortgages.

WITNESS (*our*) hands and seals this (1st) day of (*October*) in the year one thousand nine hundred and (*sixteen.*)

(*JAMES CARY,*) (L. S.)

(*FRANK BLACK.*) (L. S.)

Witness

(*MARY FLINT.*)

(Acknowledgment)

IN CONSIDERATION of the letting of the premises above mentioned to the above-named (*Frank Black,*) and of the sum of one dollar to me in hand paid by the said (*party*) of the first part, (*I*) do hereby covenant and agree to with the (*party*) of the first part above named, and (*his*) legal representatives, that if default shall at any time be made by the said (*Frank Black*) in the payment of the rent and performance of the covenants above contained on (*his*) part to be paid and performed, that (*I*) will well and truly pay the said rent, or any arrears thereof that may remain due unto the said (*party*) of the first part, and also all damages that may arise in consequence of the non-performance of said covenants, or either of them, without requiring notice of any such default from the said (*party*) of the first part.

WITNESS (*my*) hand and seal this (1st) day of (*October*) in the year one thousand nine hundred and (*sixteen.*)

(*ELMER DIX.*)

Witness

(*MARY FLINT.*)

(Acknowledgment)

FORM No. 604**Lease — Place of Business * — Loft**

THIS AGREEMENT, between (*J. Manning & Son,*) as landlord, and (*Terese V. Koster,*) as tenant, *witnesseth:*

That the said landlord does let unto the said tenant, and the said tenant does hire from the said landlord, the (*first floor over the store*) of the building now known as (*number 54 West Twenty-fourth street,*) in the (*Borough of Manhattan, City, County and State of New York,*) for a term of (*three years,*) to commence on the (*first*) day of (*October, 1915,*) and to end on the (*first*) day of (*October, 1918,*) at 12 o'clock noon, at the yearly rental of (*twelve hundred*) dollars, rent to commence (*November first,*) to be paid in (*equal monthly payments in advance on the first day of each and every month during the term,*) upon the conditions and covenants following, which are mutually agreed to:

1st. That the tenant will pay the rent as aforesaid, as the same shall fall due.

2nd. That the tenant will keep said premises in a good state of repair at her own cost and expense, including all repairs required to the plumbing work, water and gas-pipes, and fixtures belonging thereto, and at the end or other expiration of the term will deliver up the demised premises in good order and condition, damages by the elements excepted. All improvements made by the tenant are to belong to the landlord and be surrendered with the premises at the termination of the lease.

3rd. That the tenant will not, without the landlord's consent in writing, assign this agreement, nor underlet the premises, nor any part thereof, nor make any alterations in the building or premises, nor occupy the same for any other purpose than (*manufacturing corsets,*) nor occupy nor permit the same to be occupied for any business or purpose deemed extra hazardous, on account of fire, under the penalty of forfeiture and damages, and will promptly comply with and execute all laws, ordinances, regulations, rules

* The possible liability of the landlord arising out of the use of the premises in violation of any statute or regulation, *e. g.*, the Labor Law, should be kept in mind.

Place of Business — Loft

and orders of the State, City or Municipal Government and all of their various branches, departments, boards and bureaus (*and promptly comply with and execute all orders, rules and regulations of the New York Board of Fire Underwriters*) at the tenant's own cost and expense.

4th. That the tenant will, in case of fire, give immediate notice thereof to the landlord, who shall thereupon cause the damage to be forthwith repaired, unless the premises be so damaged that the landlord shall decide to rebuild, in which case, but not otherwise, the term shall cease, and the accrued rent be paid up to the time of the fire. If the building, or any part of it, is so far injured by fire as to be rendered untenable, but is, nevertheless, repaired by the landlord, then an abatement will be made from the rent, corresponding with the time during which, and the extent to which, the same may have been untenable.

5th. That in case of default in any of the covenants or in case the whole, or any part, of said premises shall become vacant, the landlord may resume possession of the premises, either by force or otherwise, without being liable to any prosecution therefor, and relet the same for the remainder of the term, at the best rent that he can obtain for account of the tenant, who will make good any deficiency.

6th. That the landlord shall have liberty, three months prior to the expiration of the term hereby granted, to put upon some conspicuous part of the exterior of said premises, a notice "For Sale" or "To Let," and applicants shall be admitted at reasonable hours of the day to view them until rented. And the landlords, or their agents, shall also be permitted, at any time during the term, to visit and examine the premises at any reasonable hour of the day.

7th. That the tenant shall not place any sign, either upon the inside or outside of said building, except with the written consent of the landlord.

8th. That the landlord hereby gives the tenant the privilege of placing one show case, to stand on the right in front of the entrance to said building, the same show case not to be larger than (*eighteen inches wide, thirty inches long, and not over five feet in height.*)

Space in Building — Manufacturing

In WITNESS WHEREOF, the parties to this agreement have hereunto interchangeably set their hands and seals, this (*first*) day of (*October*, 1915.)

(*TERESE V. KOSTER*,) (L. s.)

(*J. MANNING & SON*.) (L. s.)

By (*Walter Manning*.)

Sealed and delivered in
the presence of

(*WEBSTER B. BURTON*.)

Acknowledgments)

FORM No. 605

Lease of Space in Building — Manufacturing

THIS AGREEMENT made this (*twenty-second*) day of (*March*, 1916,) by and between (*FOUR HUNDRED AND SIXTY-SEVENTH AVENUE COMPANY*,) a corporation organized and existing under the laws of the State of New York, party of the first part, hereinafter called the Landlord, and (*ROBERT RAVEN COMPANY*,) also a corporation organized and existing under the laws of the State of New York, party of the second part, hereinafter called the Tenant; *witnesseth*,

The said Landlord has let unto the said Tenant and the said Tenant has hired from the said Landlord the entire (*Eleventh* (11th)) Floor in the building located at Nos. (460-466 *Seventh avenue, Borough of Manhattan, City and State of New York*,) known as the (*Printing Crafts Building*,) for the term of (*fourteen and eleven-twelfths* (14 11/12)) years, to commence on the first day of (*May*, 1916,) and to end on the (*thirty-first day of March*, 1931,) and to be occupied and used by the Tenant for (*printing, binding and engraving*) and not otherwise, at the yearly rental of (*Twelve Thousand* (\$12,000)) Dollars per annum, (*during the first ten* (10) *years and Twelve Thousand Five Hundred* (\$12,500) *Dollars per annum, thereafter*,) payable in equal monthly payments of (*One Thousand* (\$1,000) *Dollars during the first ten years and One Thousand Forty-one and Sixty-seven One Hundredths* (\$1,041.67) *Dollars for the remainder of the term*,) in advance on the first day of each month during the term. The Tenant shall have the privilege of taking possession and

Space in Building — Manufacturing

occupying, using and operating his business in the demised premises at such time prior to (*May 1, 1916,*) as the said premises may be completed, equipped and ready for operation, without said Tenant becoming liable for any rent for such occupancy prior to (*May 1, 1916,*) except the charge for electric current and water, at the rates hereinafter specified, and except for the sum of (*One Thousand (\$1,000)*) Dollars for rental for the month of (*May, 1916,*) which shall be paid on the signing of this Lease, and provided further that the said Landlord shall not be liable or responsible for any damages for delays in clear up, furnishing of heat, power or elevator service prior to said (*May 1, 1916*).

THIS LEASE is given upon the additional conditions and covenants following:

First. That the Tenant shall well and truly pay the rent as herein specified and shall take good care of the premises, and at the end or other expiration of the term of this Lease shall deliver up said premises in good order and condition, damages by the elements excepted.

Second. That the Tenant shall promptly execute and comply with all rules, orders, ordinances and regulations of the City, State or National Government and any and all of its departments and bureaus applicable to said demised premises for the correction, prevention or abatement of nuisances or other grievances in, upon or connected with said premises, during the said term and shall also properly comply with and execute all rules, orders and regulations of the New York Board of Fire Underwriters, the Bureau of Fire Prevention, the State, Labor and Factory Bureaus, and the rules and regulations promulgated for the administration of what is known as "Workmen's Compensation Act" except that all structural alterations or additions shall be made by the Landlord at its expense.

Third. The Tenant shall not assign this agreement or underlet or underlease the premises or any part thereof or make any alteration therein without the Landlord's consent in writing, or occupy or permit or suffer the said premises to be occupied for any business or purpose deemed disreputable or extra hazardous on account of fire, under penalty of forfeiture and damages.

Fourth. That the Tenant in case of fire, shall immediately give notice thereof to the Landlord who shall thereupon cause the damages to that portion of the building hereby leased, to be

Space in Building — Manufacturing

repaired, but if the premises be so damaged that the Landlord shall decide to rebuild, the term shall cease and the accrued rent shall be paid up to the time of said fire. In case, however, the destruction of the premises by fire shall be only partial and a portion thereof shall during the period of repairs be fit for occupancy by the Tenant for the purpose for which said premises are leased, then the rent shall be equitably apportioned and paid for the part so fit for occupancy.

Fifth. The Tenant for itself, its successors and assigns and for all persons claiming or to claim under it or them, hereby expressly covenants and agrees that if at any time the Tenant is adjudicated a bankrupt or a Receiver of its property is appointed in insolvency proceedings, that then and in that event, this Lease forthwith shall terminate and be at an end at the option of the Landlord, this covenant being one of the considerations whereby the Landlord is induced to make this Lease.

Sixth. That in case this Lease shall be terminated, cancelled or forfeited under any of the terms and conditions herein contained or the demised premises be vacant for a period of (*ten*) days the Landlord shall immediately have the right to re-enter and take possession of said premises and re-occupy the same without notice and without being liable for damages, and also any part of the premises herein demised that may have been subleased, notwithstanding that the written consent of the Landlord to said subleasing or subletting has been obtained and the Landlord may re-let the premises for the remainder of the term at the best rent it can obtain for the account of the Tenant who shall make good any deficiency.

Seventh. That the Landlord, his servants or agents, shall have at all reasonable times, access to any part of the aforesaid premises for the purpose of examining same or making any necessary repairs or changes in plumbing, electric wiring or pipes, gas-pipes, heating or other alterations and repairs in any part of the premises hereby leased, which it may be incumbent upon the Landlord to make.

Eighth. That the said Landlord may inspect said premises at any reasonable time and at least six months prior to the expiration or other termination of this Lease, post a notice or notices in conspicuous places in said premises offering the same "To Let" or "For Sale" which said notices the said Tenant covenants and agrees shall remain without hindrance or molestation.

Space in Building -- Manufacturing

Ninth. The said Tenant covenants both for itself and its servants, agents and employees faithfully to observe and keep all necessary rules and regulations of the building which affect said premises and will at its own cost and expense make any and all necessary alterations or changes in the premises demised which may be made necessary by any act of the Tenant, its servants and agents in violation of any law, ordinance, rule or regulation of any City, State or Government Body or Board of Fire Underwriters, except that all structural alterations or additions shall be made by the Landlord at its expense; that upon the failure of the Tenant to make any such changes or alterations within the premises hereby demised as may be required by any order, rule, regulation or ordinance last above referred to within ten (10) days of the receipt of said order or notice, that then and in that event the said Landlord may enter the demised premises at his option and do and perform said alterations or make such changes at the cost and expense of the Tenant, which said expense shall be deemed as rent and added to the next monthly installment of rent then accruing and be collectible as such.

Tenth. In case of any damages or injury to the glass in demised premises or damage or injury to the said premises of any kind whatsoever, said damage or injury being caused by the carelessness, negligence or improper conduct of the party of the second part, its agents, servants or employees, then the said party of the second part shall cause the said damage or injury to be repaired as speedily as possible at its own cost and expense, otherwise the same shall be replaced or repaired by the party of the first part at the cost of the party of the second part.

Eleventh. The Landlord further covenants and agrees that the carrying capacity of the floor of the premises hereby leased is (*Two Hundred and Forty*) (240) pounds to the square foot and the said Tenant covenants and agrees that it will not place any machinery or other material upon said premises in excess of the said carrying load and will distribute the machinery and weight upon said premises to conform with said carrying load under penalty of forfeiture and damages.

Twelfth. The Landlord covenants and agrees that he will keep said building open and in operation at all times, day and night, including Sunday and Holidays to the extent that work may lawfully be done, and will furnish heat, in said premises during the

Space in Building—Manufacturing

winter season of about eighty (80) degrees in the day time and about sixty (60) degrees in the night, and will furnish elevator service to the capacity of installation between the hours of 7:30 A. M. and 6:30 P. M. on each business day and at all other times on request after due notice is given to the Landlord.

Thirteenth. The said Landlord further agrees to furnish to the Tenant at all hours of every day and night, including Sundays and Holidays, electric current for light and power in sufficient quantities and usual Commercial quality for the use of the Tenant at the price of four (4) cents per kilowatt hour, payable monthly and collectible as rent, it being understood and agreed that the Landlord shall not be liable for any delay or interruption in the light, heat or power or elevator service in said building caused by accident, strikes or any cause beyond the control of the Landlord, power and light current to be delivered by the Landlord at the meters to be installed on the premises hereby leased.

Fourteenth. Said Tenant further agrees to pay for all Croton water that may be properly charged against the premises hereby leased which said charge is to be determined by deducting from the entire water charge of the aforesaid building, the amount used by the Landlord and apportioning the balance among the Tenants of the various floors. Provided, however, that any such water service other than that supplied by regular fixtures to be installed, shall be metered and paid for by the Tenant using the same, said Croton water charges when apportioned shall be paid by the Tenant as rent and be added to the next monthly installment and be collectible as such.

Fifteenth. The party of the second part agrees during the term of this Lease to keep the floor of these premises in a clean and sanitary condition, to use all necessary and approved safeguards against fire risk, to maintain drip pans under its machinery for the purpose of preventing oil, grease or ink or other wet material from sinking into the floor of the premises leased.

Sixteenth. The Tenant shall neither place nor allow nor cause to be placed any sign or signs of any kind whatsoever in or about the entrance of said building or on said building, except in, at or upon such place or places as may be indicated by the Landlord and consented to by him in writing, except that the Tenant shall have the right to put an appropriate sign in connection with its business on the entrance of design, style and size similar to that used by the other Tenants.

Space in Building — Manufacturing

Seventeenth. It is expressly understood and agreed by and between the parties to this agreement that the Landlord shall not be liable for any damage or injury by water which may be sustained by the said Tenant or other person or any other damage or injury resulting from the carelessness, negligence or improper conduct on the part of any other Tenant or agents or employees, or by reason of the breakage, leakage or obstruction of the Croton water sprinkler pipes or soil pipes, electric conduits or wiring or other leakage or breakage in or about said building, unless due to Landlord's negligence or neglect or to faulty construction.

Eighteenth. The Tenant further agrees that he shall not encumber or obstruct the said sidewalk in front or adjacent to said building or the hallways or elevators of said building or allow the same to be obstructed and that no goods, material or machinery or other articles shall be stored on said sidewalk or in said hallways of the premises leased, or left therefor a longer period than shall be absolutely necessary to transport them to or from the premises of the Tenant.

Nineteenth. It is expressly understood and agreed that this Lease and all rights of the Tenant hereunder or otherwise, are hereby made expressly subject and subordinate to any mortgage or mortgages, not exceeding a total amount of (*Two Million Two Hundred and Fifty Thousand*) (\$2,250,000) Dollars that may at any time be placed or be or become a lien upon the whole or any part of the said building or premises and especially to a mortgage to the (*Metropolitan Life Insurance Company*) in the sum of (*Two Million*) (\$2,000,000) Dollars now a lien upon said premises and the building being erected thereon to secure any and all advances made or to be made on account of any such mortgages to the full extent of the principal thereof and the interest, and the Tenant hereby covenants and agrees to execute and deliver or cause to be executed and delivered to the Landlord such papers and documents as said Landlord deems necessary to effectuate the subordination of this Lease to any mortgage that may at any time be a lien upon the whole or any part of said building or premises not exceeding (*Two Million Two Hundred and Fifty Thousand*) (\$2,250,000) Dollars in the aggregate, and refusal to execute said papers and documents and deliver the same to Landlord, shall entitle the said Landlord or its legal representatives and assigns to the cancelling of this Lease without incurring any

Place of Business

expense or damage and the term hereby granted is expressly limited accordingly.

Twentieth. Permission is hereby given to the Tenant to sublet (*one quarter* ($\frac{1}{4}$)) of the demised premises to any Tenant whose business is suited to the building and is not deemed extra hazardous on account of fire, whose occupancy shall be subject to the approval of the Landlord, but it is understood and agreed that the Tenant shall still remain liable for the full rent and for all other terms and conditions of this Lease.

Twenty-first. Said landlord covenants and agrees that the Tenant upon paying the said yearly rent and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid. It is further understood and agreed that the covenants and agreements herein contained are binding on the parties hereto, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the party of the first part has caused these presents to be signed and its corporate seal to be affixed by its officer duly authorized thereto, and the party of the second part has caused these presents to be signed and its corporate seal to be hereunto affixed by its officers duly authorized thereto, the day and year first above written.

(*FOUR HUNDRED SIXTY-SEVENTH AVE. CO., INC.*)

By (*Edward Bell*),

President.

(*ROBERT RAVEN COMPANY, INC.*)

By (*James Marx*),

Vice-President.

Attest:

[SEAL.] (*HENRY HALL.*)

FORM No. 606

Lease — Place of Business

THIS AGREEMENT, made this (*first*) day of (*May*, 1916,) between (*The James Realty Corporation*), of (*the Borough of Manhattan, City, County and State of New York, a corporation created under the laws of the State of New York*), hereinafter described as lessor, and (*the National Bank of New York, a corporation created under the laws of the United States of America*),

Place of Business

doing business in (*the Borough of Manhattan, City, County and State of New York,*) hereinafter described as tenant.

WITNESSETH, that the said lessor does hereby lease unto the said tenant, and the said tenant does hereby hire and take from the said lessor (*all that part of the ground floor of the premises known as 80 Broadway, in the Borough of Manhattan and City, County and State of New York,*) bounded and described as follows:

(Description.)

Reserving and excepting from the operation of this lease all the (*elevator shaft and stairway*) and also all that part of the (*basement*) of said premises bounded as follows:

(Description.)

For the term of (*five*) years to commence on the (*first*) day of (*September, 1916,*) and to end on the (*first*) day of (*September, 1921,*) to be used and occupied as a (*bank*) and not otherwise, upon the conditions and covenants following:

First. That the tenant shall pay the rent of (*nine thousand (\$9,000) dollars*) per annum therefor. Such rent to be payable in monthly payments of (*seven hundred and fifty (\$750) dollars*) each in advance, on the first day of each month of said term.

Second. That in addition to the rental so specified the tenant shall pay to the landlord the rent or charge, which may, during the demised term, be assessed or imposed for the water used or consumed in or on the said premises, whether determined by meter or otherwise, as soon as and when the same may be so assessed or imposed, and will also pay the expenses for the setting of a water meter in the said premises should the latter be required. If such rent or charge or expenses are not so paid the same shall be added to the next month's rent thereafter to become due.

Third. That the tenant shall take good care of the premises, keep the same in proper sanitary condition, free from waste and rubbish and shall keep the premises in good tenantable condition and make all repairs necessary for that purpose; and shall not cut, drill into nor otherwise disfigure, nor permit the disfigurement of the iron, marble, stone or brickwork of the building; nor obstruct nor permit obstruction of any lights, nor skylights, nor injure nor deface the premises, nor use nor suffer to be used, under the penalty of forfeiture and damage, the whole or any

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part thereof for any purpose more injurious than that above expressed, and at the end or other expiration of the term shall deliver up the demised premises in good order and condition.

Fourth. That the tenant shall promptly execute and comply with all rules, orders, ordinances and regulations of the State or City Government, and of any and all of its Departments and Bureaus applicable to said premises; and shall also promptly comply with and execute all rules, orders and regulations of the Board of Fire Underwriters.

Fifth. That the tenant shall not assign this agreement, or underlet or underlease the premises, or any part thereof, nor make any alterations on the premises without the landlord's consent in writing, nor occupy or permit or suffer the same to be occupied for any business or purpose deemed disreputable or extra-hazardous on account of fire, under the penalty of forfeiture and damages.

Sixth. That the tenant shall, in case of fire, give immediate notice thereof to the landlord, who shall thereupon cause the damage to be repaired forthwith; but if the premises be so damaged that the landlord shall decide to rebuild, the term shall cease and the accrued rent be paid up to the time of the fire, provided, however, that such fire be not caused by carelessness, negligence or improper conduct on the part of the tenant or the agents, or employees thereof.

Seventh. That the landlord shall have the right to enter into and upon said premises, or any part thereof, at all reasonable hours, for the purpose of examining the same, or making such repairs or alterations therein as may be necessary.

Eighth. That the landlord shall have the right to show the premises to persons wishing to hire or purchase the same; and that during the three months next preceding the expiration of the term hereby granted, the landlord shall have the right to place notices on the front of said premises, or any part thereof, offering the premises "To Let" or "For Sale," which notices are to remain thereon without hindrance or molestation.

Ninth. That if the said premises, or any part thereof, shall become vacant during the said term, the landlord may re-enter the same, either by force or otherwise, without being liable to prosecution therefor, and re-let the said premises as the Agent of the tenant and receive the rent thereof, applying the same, first to the payment of such expenses as the landlord may be put to in re-entering, and then to the payment of the rent, due by these

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presents; the balance (if any) to be paid over to the tenant, who shall remain liable for any deficiency.

Tenth. That the tenant shall keep the area, sidewalk and gutter in front of the demised premises free from snow, ice and other obstructions, and shall not encumber nor obstruct the same, nor the hallways, or any other portion of said premises, nor allow the same to be obstructed or encumbered in any manner.

Eleventh. That the tenant shall neither place, or cause, or allow to be placed, any sign or signs of any kind whatsoever at, in or about the entrance to or exterior of said premises, except in or at such place or places as may be indicated by the said landlord and consented to by the same in writing, the landlord reserving the right to remove and replace such signs whenever necessary in order to paint the said building or make any other repairs, alterations or improvements in or upon the same or any part thereof; such removal and replacing to be done at the landlord's expense.

Twelfth. That the landlord shall not be liable for any damage or injury by water, which may be sustained by the tenant or any other person; or for any other damage or injury resulting from the carelessness, negligence, or improper conduct on the part of any other tenant or of any other person in said premises, or by reason of the breakage, leakage or obstruction of the water or soil pipes or other leakage in or about the said premises.

Thirteenth. That if default be made on the part of the tenant in any of the covenants herein contained, that then the term hereby granted shall, at the option of the landlord, forthwith cease and determine, and it shall be lawful for the landlord, by summary proceedings or otherwise, to re-enter the said premises, take possession of the same and remove all persons therefrom. And in case of such removal, dispossession and re-entry the said lessor shall with due diligence let the premises for the remainder of the term, either in his own name or as the agent of the tenant, who shall pay any deficiency which the lessor shall suffer between the rents hereby reserved and those received by the lessor during the residue of the time remaining from the re-entry, and the said tenant shall be liable for the performance of the covenants and conditions of the said lease during the residue of the term remaining after the re-entry.

Fourteenth. That no waiver at any time of forfeiture for the breach of any covenant, shall impair the right of the landlord to insist upon such forfeiture for any subsequent breach, nor shall

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the acceptance of rent at any time constitute a waiver of forfeiture for the breach of any covenant or condition, or of the damages sustained by the landlord.

Fifteenth. That if the whole or any part of the premises hereby demised, shall be taken by any competent authority for any public use or purpose, then the term hereby granted shall at the option of the landlord cease from the time when possession of the part so taken shall be required for such public purpose, and without apportionment of award, the current rent, however, in such case to be apportioned.

Sixteenth. That any demand to be made or notice to be given hereunder may be made on or given to the tenant either personally, or, as now directed by law, or at the landlord's option by sending a copy of such demand or notice by mail, addressed to the tenant at the demised premises.

Seventeenth. That the tenant hereby expressly waives any right of redemption under the provisions of Section 2256 of the Code of Civil Procedure of the State of New York in the event of the termination of this lease prior to the expiration of the demised term by reason of any default on the part of the tenant in the payment of the rent reserved hereby.

Eighteenth. That this lease shall be subject and subordinate to the lien of any mortgage or mortgages of record now, or which may hereafter be placed against said premises and the recording of said mortgage or mortgages shall be prior in lien to this lease, irrespective of the date of recording; and the tenant agrees to execute any instrument without cost, which may be deemed necessary to further effect the subordination of this lease to any such mortgage or mortgages.

Nineteenth. That if the tenant shall default in the performance of any of the covenants in this lease contained, or in the event that the tenant shall become insolvent or bankrupt, or shall make an assignment for the benefit of creditors, the landlord may give ten days' notice to the tenant of the election to terminate said lease and at the expiration of such ten days, the term of this lease shall terminate as if it were the expiration of the original term.

Twentieth. That in the event of the institution of summary proceedings and the issuance of the warrant thereunder the liability of the tenant for the payment of rent reserved herein shall nevertheless continue for the full term of this lease.

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Twenty-first. That in the event that the tenant shall fail or neglect to make any repairs, required by the terms of this lease, then the landlord may make all such repairs and add the cost thereof to the next month's rent thereafter to become due.

Twenty-second. That in the event of a sale of the leased premises the landlord shall have the right to transfer any security deposited hereunder to the vendee for the benefit of the tenant and the landlord shall be considered released from all liability for the return of such security.

Twenty-third. That the landlord shall not be liable to any one in any way for any personal damage or injury while in the leased premises or the appurtenances connected therewith and the tenant shall indemnify and save harmless the landlord from any liability thereunder.

Twenty-fourth. That the tenant has this day deposited with the landlord the sum of (*five thousand* (\$5,000) *dollars*) as security for the faithful performance of the covenants herein contained. In the event or the failure of the tenant to perform any of said covenants then the sums so deposited shall belong to the landlord as liquidated damages, the exact amount of damage in such an event not being ascertainable. If all of the covenants shall have been complied with by the tenant then said security shall be returned at the expiration of this lease.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers and their corporate seals to be hereto affixed the day and year first above written.

(THE JAMES REALTY CORPORATION,)

By (*Arthur Davison, Treas.*)

The James
Realty Corporation }
Seal.

(THE NATIONAL BANK OF THE CITY OF
NEW YORK,)

By (*C. Van Orden, President.*)

(SEAL.)

Attest: (*William Hart,*)

(*Cashier.*)

Signed, sealed and delivered in the presence of

(*EMMET O'NEILL.*)

(Acknowledgment)

FORM No. 607**Lease of Place of Business**

THIS AGREEMENT, made the (30th) day of (March,) in the year one thousand nine hundred and (sixteen,) by and between (William Thompson Company,) a corporation created by and existing under the laws of the State of (New York,) party of the first part, hereinafter called the lessor, and (John Johnson Sons, Inc.,) of the (Borough of Manhattan, City, County and State of New York,) party of the second part, hereinafter called the lessee.

WITNESSETH, that the lessor does hereby lease unto the lessee, and the lessee does hereby hire from the lessor, the following described premises: [Description.] Said premises being known as (number 514 West Tenth Street,) for the term of (seven years) to commence on the (first) day of (May,) one thousand nine hundred and (sixteen,) and to end on the (first) day of (May,) one thousand nine hundred and (twenty-three;) at the yearly rent or sum, (for the first two years and eight months of said term, of forty thousand dollars, (\$40,000) and for the remainder) of said term, (commencing on the first day of May, one thousand nine hundred and nineteen, the yearly rental or sum of fifty thousand dollars, (\$50,000)) to be paid in (equal monthly) payments in advance on the (first) day of (each and every) month during said term.

The above letting is upon the following conditions, all and every one of which the lessee COVENANTS and AGREES with the lessor to keep and perform:

1. The lessee shall pay the specified rent at the times and in the manner provided.

2. The lessee, on or before the (first day of May, one thousand nine hundred and sixteen,) shall deposit with the party of the first part the sum of (seven thousand dollars) (\$7,000,) or at his option, in lieu thereof, securities of a character acceptable to the lessor of the market value of (seven thousand dollars) (\$7,000;) said sum or said securities to be held and retained by the lessor as and for security for the payment of the rent agreed to be paid hereunder and for the reimbursement of the lessor for any expense or damage incurred or suffered because of the failure of the lessee to keep and perform each and every of the covenants, conditions and agreements herein agreed by him to be kept and performed

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during the entire term hereby leased; and the lessor, upon the determination of this lease, and when the lessee shall have in all respects complied with the covenants, conditions and agreements herein contained, if cash shall have been deposited, will repay to the lessee the said sum of (*seven thousand dollars*) (\$7,000,) together with interest thereon, at the rate of (*four*) (4) per cent. per annum, or, if securities shall have been deposited, deliver up the said securities so deposited, with the accretions; if, in accordance herewith, securities are deposited in lieu of cash, then it is also agreed that, if the market value of the aggregate of such securities shall at any time be less than (*seven thousand dollars*) (\$7,000,) then and in that event the lessee will immediately, upon written demand, deposit additional securities acceptable to the lessor, or cash, so that the principal fund of such security shall be restored to its original amount; and upon failure so to do, the lessor may, at its option, sell such securities at public or private sale, and the proceeds thereof shall be and remain as the security provided herein; and if the proceeds of the sale of such securities amount to less than (*seven thousand dollars*) (\$7,000,) or if the security deposited in accordance herewith shall be decreased by the application of the same, or any portion thereof, for the payment of any rent in arrear or to the payment of any loss sustained through the breach of any of the covenants and conditions herein contained, then and in either of said events, the lessee will, within (*five days*) after written demand, deposit with the lessor a sum sufficient to restore the principal fund of said security to its original amount; if the lessee shall deposit securities as herein provided, (*it*) may at any time substitute in lieu thereof the sum of (*seven thousand dollars*) (\$7,000) plus interest on said amount at and after the rate of (*four*) per centum per annum from the (*first*) day of (*September*,) one thousand nine hundred and (*sixteen*,) to the date of such substitution, and in that event the lessor shall deliver to the lessee the securities so deposited, if same have not been sold as herein provided, with the accretions, and thereafter the sum so deposited shall constitute the security herein provided.

3. The lessee shall punctually pay and discharge, when due, all rents or rates or meter charges for city or other water which during the term hereby granted may be assigned or imposed upon

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or grow due and payable out of or for the premises known as number (514 *West Tenth*) Street.

4. The lessee shall take good care of the premises hereby leased and, at (*its*) own cost and expense, make all repairs of whatever nature and description, both inside and outside, which are or may become necessary or proper to make and keep the said premises in perfect condition, except such as may be necessitated by fire; and the lessor, its agents and employees, may at all times enter to view said premises and to make any repairs which it or they may find necessary to make, to protect its interest in said estate and the cost of making such repairs shall be paid by the lessee upon demand.

5. The lessee shall not assign this lease, nor let, underlet, nor sublet, the premises or any part thereof, without the written consent of the lessor; nor occupy nor use nor permit the same to be occupied or used for any business or purpose deemed extra hazardous on account of fire, under the penalty of forfeiture and damages.

6. The lessee shall, at (*its*) own cost and expense, promptly observe and keep all laws, rules, orders, ordinances and regulations of the Federal, State and City Governments and any and all their departments and bureaus, and those of any other competent authority, applicable to said premises, as also all repairs and alterations which may be made thereon, as herein provided; and also, at (*its*) own cost and expense, shall promptly comply with all laws, rules, orders, regulations and requirements of the Board of Fire Underwriters or of any similarly constituted body. Upon failure so to comply with any of the foregoing requirements, the lessor may comply with the same for account of the lessee, and the cost of such compliance shall be paid to the lessor upon demand.

7. The lessee shall allow the lessor or (*its*) agents to show said premises to persons for purpose of sale and hire; and on and after the first day of (*August*) next preceding the expiration of the term hereby granted, to place in a conspicuous part of the exterior of the premises the usual notices offering the premises "To Let" or "For Sale," and will permit the same to remain thereon without hindrance or molestation.

8. The management and control of said premises, except as herein restricted, shall be exclusively in the hands of the lessee during said term and he shall keep the sidewalks abutting on the

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said premises free from all snow and ice and other obstructions, and shall neither encumber nor obstruct the sidewalk, gutters, hallways or stairways, nor allow the same to be obstructed or encumbered in any manner.

9. The lessor shall not in any event be liable for any injury or damage to any property or to any person happening on or about said premises, no matter how occurring, unless due to (*its*) own negligence.

10. The lessee shall and will save and keep the lessor harmless and indemnified from all penalties, claims or demands that may be made against it by reason of any defect in the premises leased or the appurtenances thereto; or of any neglect or default in the keeping or maintaining of the same as herein provided; or of any failure by the lessee to keep, perform and observe each and every of the covenants, conditions and agreements herein contained on (*its*) part to be kept, performed and observed.

11. If the lessee shall fail, neglect, or refuse to pay any charge imposed or expense incurred or other sum required by (*it*) to be expended, paid or deposited, as the case may be, under the terms of this lease, then the amount of such charge or expense or sum required to be expended, paid or deposited, as the case may be, shall be added to and form part of the rent to become due under the terms of this lease on the first day of the month next ensuing the time when such sum shall have been assessed or imposed or required to be paid or deposited or demanded; and the non-payment thereof shall have the same effect, and such proceedings may be taken by the lessor in reference thereto, as is herein provided in case of default in payment of the rent reserved by this lease.

12. If, during the term of this lease, the demised premises are destroyed by fire or the elements, or partially destroyed so as to render said premises wholly unfit for occupancy, or if they shall be so badly injured that they cannot be repaired with reasonable diligence, within (*four*) months from the happening of such injury, then this lease shall cease and become null and void from the date of such damage or destruction, and the lessee shall immediately surrender the premises and all interest therein to the lessor, and shall pay rent only to the time of such surrender; and in case of destruction or partial destruction as above mentioned, the lessor may resume possession of the premises discharged of this lease, and may remove all parties therefrom; and if the

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premises shall be repairable within (*four*) months as aforesaid, then the lessor shall repair the same with all reasonable speed, and the rent shall cease until such repairs shall be completed; provided, however, that in case any portion of the premises shall, during the period of such repairs, be fit for occupancy by the lessee for the purpose for which these premises are demised, then the rent shall be equitably apportioned and paid for the part so fit for occupancy.

13. The lessee, at the determination of the term hereby granted either by lapse of time, forfeiture, or as herein provided, or otherwise, will quit and surrender the premises leased to the lessor, in perfect condition, reasonable use and wear thereof being allowed for; and all improvements and additions, alterations and repairs to or upon said premises, shall remain and be surrendered with the premises leased at the determination of this lease without disturbance, molestation or injury.

14. In case the lessee shall default in the payment of the rent or any part thereof, or of any other sum of money to be by him paid, under the terms of this lease, or in the performance and observance of any of the covenants and conditions herein contained or if the said premises or any part thereof shall become vacant or are abandoned during the said term, the lessor shall and may have possession of the same by summary proceedings or by any other lawful method; and shall and may re-enter the same and use such force for that purpose as (*it*) shall think fit without being liable for any prosecution therefor; and thereupon the lessor, in (*its*) own name, may re-let the said premises as the agent of the party of the second part, applying the avails thereof first to the payment of the expense incurred or paid in recovering possession, and then to the payment of the rent, and any other sum of money unpaid and required by this lease to be paid by the lessee.

If the lessor shall recover or take possession of the said premises as aforesaid and shall be unable to re-let the same or obtain sufficient rent therefor to make up the amount of rent hereby reserved and also any sum of money required by the terms hereof to be paid by the lessee, the lessee shall and will pay to the lessor any and all loss or difference of rent for the residue of said term and any and all loss or deficiency of any other sum of money required by the terms hereof to be paid by (*it*); and the security provided herein shall be held for all the purposes herein mentioned; and

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the lessee expressly waives all right to quit possession or terminate this lease under the statute (section 227, Real Property Law), and also, for (*itself*) and all persons claiming under (*it*), expressly waives all right to redeem the premises (under sections 2256 and 2257, Code of Civil Procedure, or otherwise) after a warrant to dispossess shall have been issued or after a judgment in an action of ejectment shall have been made and rendered.

15. The lessee, at (*its*) own cost and expense, may make alterations in and upon the premises leased; before any alteration shall be made, the plans therefor shall be submitted to an architect designated by the lessor who shall determine if the proposed alterations are permanent improvements to the premises and shall fix the amount which, in (*its*) judgment, will be required to restore said premises if such alterations are made; and the lessee, upon depositing with the lessor security for the faithful performance of the covenant to restore said premises to their original condition, in the amount fixed by said architect and in form acceptable to the lessor, and the payment of the architect's charges, may make such alterations, and the lessee shall pay any additional insurance premium required to be paid by the lessor because of such alterations and, upon the determination of this lease or the expiration of the term hereby demised, (*it*) will, at his own expense, restore the premises leased to the condition same were in before alteration.

16. The lessor will keep the said premises warmed by a heating apparatus from the (*tenth*) day of (*October,*) in the year, to the (*tenth*) day of (*May,*) following, excepting on Sundays and holidays, provided, however, that in the event that it shall be necessary or convenient to stop the heating apparatus or any thing appertaining thereto for repairs or alterations or because of accident, the lessor may stop the operation of such heating apparatus for such reasonable time as shall be necessary for the purpose above stated; and the lessee covenants and agrees to permit free access to that part of the building wherein is contained the heating apparatus and other machinery, and that ashes may be removed from the boiler room of said building through the basement thereof to the street and by way of the freight elevator therein.

17. The lessee hereby subordinates this lease to any mortgages which the lessor may from time to time place upon the premises, provided that the amount of such mortgages shall not exceed in the aggregate seventy-five per cent. of the actual value of the

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premises at the time when said mortgages are placed thereon and provided that if the same be in substitution of the present mortgages on the premises and such present mortgages exceed said percentage they do not exceed the amount of the present incumbrances, and such mortgages whenever recorded shall be superior and prior in lien to this lease and the lessee agrees that he will execute any instrument which may be deemed necessary or desirable to properly effect the subordination of this lease to any such mortgages and upon the refusal of the lessee after reasonable notice to execute any such instruments the lessor may cancel this lease and the term hereby granted shall thereupon cease.

18. If the whole or any part of the premises hereby demised, shall be taken by any competent authority for any public use or purpose, then the term hereby granted shall at the option of the lessor cease from the time when possession of the part so taken shall be required for such public purpose, and without apportionment of award, the current rent, however, in such case to be apportioned.

19. If the lessee shall default in the performance of any of the covenants in this lease contained, or in the event that the lessee shall become insolvent or bankrupt, or shall make an assignment for the benefit of creditors, the lessor may give (*ten*) days' notice to the lessee of (*its*) election to terminate said lease and at the expiration of such (*ten*) days, the term of this lease shall terminate as if it were the expiration of the original term.

20. The failure of the lessor to insist upon strict performance of any of the covenants or conditions of this lease, or to exercise any option herein conferred in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any covenants, conditions or options, but the same shall be and remain in full force and effect.

21. And the lessor, for (*itself, its successors*) and assigns, does covenant that the lessee, and (*its successors*), upon paying the said yearly rent, and performing and observing the covenants, conditions and agreements on his part to be performed and observed, shall and may peaceably have, hold and enjoy the said premises for the term aforesaid.

22. And it is further understood and agreed that this agreement and lease and the covenants and agreements and conditions contained herein shall apply and inure to and are binding on the

Guaranty

(*successors*) and assigns, and the legal representatives of the parties hereto, respectively.

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed by their duly authorized officers, in duplicate of even date and tenor, and their corporate seals to be affixed hereto, the day and year first above written.

[CORPORATE SEAL.]

(*WILLIAM THOMPSON COMPANY.*)

[L. S.]

By (*William Thompson, President.*)

(*JOHN JOHNSON SONS, INC.,*)

By (*Ralph Johnson, Treasurer.*)

[SEAL]

Attest: (*James Platt, Secretary.*)

(Acknowledgment)

IN CONSIDERATION of the letting of the premises within mentioned by the lessor within described, and of the sum of one dollar to me in hand paid by the said lessor, the receipt of which is hereby acknowledged I do hereby become surety for the punctual payment of all the rent and the performance of all the covenants in the within written agreement mentioned to be paid and performed by the lessee,* as herein specified; and if any default shall at any time be made herein I do hereby promise and agree to pay unto the lessor in said agreement named the said rent, or any arrears thereof that may be due, and to fully satisfy the conditions of said agreement and to pay all damages that may accrue by reason of the non-fulfillment thereof, without requiring notice of default or proof of demand being made.

Given under my hand and seal the (18th) day of (*March*, 1916.)

(*JOHN D. CORNROCK.*) (SEAL.)

In presence of
(*THOMAS ATKINS.*)

(Acknowledgment)

* See *Murphy v. Ottman*, 127 App. Div. 563.

FORM No. 608**Lease of Office**

THIS INDENTURE, made the (15th) day of (October,) nineteen hundred and (sixteen,) between (MODERN OFFICE BUILDING CORPORATION,) incorporated under the laws of the State of New York, hereinafter called "Landlord," and (JAMES BACON, of the Borough of Manhattan, City of New York,) hereinafter called "Tenant."

WITNESSETH, that the Landlord hereby leases to the Tenant, and the Tenant hereby hires from it as Landlord, the rooms numbered (602, 603 and 604) as indicated in red on the diagram hereto attached, in the (sixth) floor of its building, (99 Broadway, in the Borough of Manhattan, City of New York,) for the term of (three) years (or until the said term shall sooner cease under the provisions hereof,) to commence on the (1st) day of (November, 1916,) and to end at noon on the (31st) day of (October, 1919,) at the annual rent of (three thousand six hundred (\$3,600)) dollars, lawful money of the United States, which the Tenant covenants to pay to the Landlord at its principal office in the City of New York, in equal monthly instalments in advance on the first day of each month during the said term, the receipt of (\$300,) being the rent for the first month of said term, being hereby acknowledged.

This lease is subject to all present or future mortgages or deeds of trust affecting the demised premises.

This letting is upon the following express conditions, each of which the Tenant covenants will be observed and performed throughout the said term, and any violation of any thereof, if followed by written notice so declaring, given by the Landlord or its duly authorized agent and served upon the Tenant or left upon the demised premises, shall terminate the estate hereby granted, that is to say:

(a) The premises hereby leased shall be used and occupied by the Tenant as its office for the transaction of its business (as a mercantile agency) and for no other purpose.

(b) Without the prior written consent of the Landlord the term hereby demised shall not be assigned, nor shall any right or interest thereto or therein be conferred on or vested in anyone other than

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the Tenant, whether by operation of law or otherwise, nor shall the Tenant let, underlet, or permit the leased premises or any part thereof to be used by others for hire.

(c) The Tenant shall not make any alterations in, additions or improvements to the leased premises without the prior written consent of the Landlord.

(d) The Tenant and the clerks, servants, agents and visitors of the Tenant shall faithfully comply with and observe the rules and regulations hereinafter set forth or hereafter to be made in accordance with the provisions of this lease.

(e) The Tenant shall pay the rent in advance on the first day of each month during the said term.

The parties covenant as follows:

DESERTION

First. In case the leased premises shall be deserted or vacated, the Landlord shall have the right and authority to enter the same as the agent of the Tenant, either by force or otherwise, without being liable to any prosecution or claim therefor, and to relet the same as the agent of the Tenant, and receive the rent therefor, and to apply the same to the payment of the rent due hereunder, holding the Tenant liable for any deficiency.

TENANT'S CARE

Second. The Tenant shall take good care of the leased premises and the fixtures therein, and, at the expiration or other termination of the term, shall surrender the said premises and fixtures in as good condition as reasonable use will permit. All injury to the building or fixtures caused by moving the property of the Tenant in or out of the said building, and all breakage or other injury done by the Tenant or the agents, clerks, servants or visitors of the Tenant, as well as any damage caused by the overflow or escape of water, steam, gas, electricity or other substance, due to the negligence of the Tenant, or the agents, clerks, servants or visitors of the Tenant, shall be repaired by the Landlord at the expense of the Tenant. The cost thereof shall be determined on statements rendered by the Landlord to the Tenant, and the sum so determined shall be payable to the Landlord upon delivery of such statement, and if not paid within ten days thereafter, the said sum shall

become so much additional rent for the succeeding month, payable with the instalment of rent next becoming due, and collectible as such.

ALTERATIONS

Third. All alterations, additions or improvements upon the leased premises or the building made by either party (except movable furniture and fixtures put in at the expense of the Tenant and removable without defacing or injuring the building or leased premises) shall become the property of the Landlord, and shall remain upon and be surrendered with the premises as a part thereof at the end of the term without disturbance, molestation or injury.

FIRE

Fourth. In case of injury to the demised premises or appurtenances by fire or other cause, the Tenant shall give immediate notice thereof to the Landlord. If the demised premises shall be damaged by fire or other cause without the fault or neglect of the Tenant, or the agents, clerks, servants or visitors of the Tenant, the injury shall be repaired as speedily as possible after such notice at the expense of the Landlord; but if, without such fault or neglect, the demised premises shall be rendered untenable by the elements or any other cause, the rent shall cease until the same shall be repaired as aforesaid. If, without such fault or neglect, the building shall be destroyed by the elements or any other cause, or so nearly destroyed as to require rebuilding, the rent shall be paid up to the time of such destruction, and from thenceforth this lease shall cease and come to an end. No compensation or claim will be allowed by the Landlord by reason of inconvenience, annoyance or injury to business arising from the necessity of repairing any portion of the building, however the necessity may occur.

DAMAGE

Fifth. The Landlord shall not be liable for any damage to any property or person at any time in the leased premises or in said building from steam, gases, or electricity, or from water, rain or snow, whether they may leak into, issue or flow from any part of said building, or from the pipes or plumbing works of the same, or from any other place or quarter. The Tenant shall give to the Landlord or to its agent prompt written notice of any accident to,

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or defect in, the water pipes, gas pipes, warming apparatus or electric wires, and the same will be remedied by the Landlord with due diligence, subject to the provisions of the paragraph "Second," above.

ELEVATORS, HEAT, LIGHT AND JANITOR SERVICE

Sixth. The Landlord covenants that at its expense passenger elevators will be run on business days from 8 A. M. to 6 P. M., and that two elevators will be subject to call at all other times; that at its expense its janitor will clean and keep in order the leased premises, it being understood and agreed between the parties hereto that no person or persons other than the said janitor, and his assistants will be permitted to enter the leased premises for such purpose; that at its expense it will furnish steam heat to warm the halls and offices from the first day of October to the twentieth day of May in each year, if necessary, and a reasonable amount of artificial light for lighting the same; but the Landlord shall not be liable for any failure to supply such elevator, heating, lighting or janitor service not due to gross negligence on its part; nor shall the Landlord be responsible to the Tenant for loss of property in or from said leased premises, or for any damage done to furniture or effects therein, however occurring. The Landlord reserves the privilege of stopping the service of the steam, elevator, water or lighting systems at such times as may be necessary by reason of accident, repairs, alterations or improvements desirable or necessary to be made, until such time as said repairs, alterations or improvements shall have been completed.

INSPECTIONS

Seventh. The Landlord or its agents shall have the right to enter the leased premises at any time to examine the same or to make alterations and repairs, or for any purpose which it may deem necessary for the operation or maintenance of the building or its equipment, or to exhibit the leased premises to applicants to hire.

REPAIRS

Eighth. The Landlord covenants to keep the said building in good structural repair, so far as concerns the Tenant, except as herein otherwise provided; but no liability to the Tenant shall accrue under this covenant until the Tenant has given notice in

writing to the Landlord or its agent of the specific repairs which are so required to be made. Nothing herein contained shall affect the liability of the Landlord in case of the destruction of the building or the demised premises or injury to the same by fire or other cause.

RULES AND REGULATIONS

Ninth. The Tenant covenants that the rules, regulations and stipulations printed on the back of this lease, and such other and further rules and regulations as the Landlord may make, being in its judgment needful for the reputation, safety, care or cleanliness of the building and premises, or the operation or maintenance of the building and its equipment, or the comfort of the tenants, shall be faithfully observed and performed by the Tenant and by the clerks, servants, agents and visitors of the Tenant. The Landlord, however, shall have the right to change said rules and to waive in writing any or all of said rules in the case of any one or more tenants and the Landlord shall not be responsible to the Tenant for the non-observance or violation of any of said rules and regulations by any other tenant.

DEFAULT

Tenth. The Tenant further agrees that its covenants and agreements herein contained shall be deemed conditions as well as covenants, and that if default be made in any of such covenants or agreements, this lease shall become null and void thereupon if the Landlord so elect, and the Landlord shall have the right to re-enter the demised premises either by force or otherwise, and dispossess and remove therefrom the Tenant or other occupants thereof and their effects, to store at the cost of the Tenant any personal property then on the leased premises, and to hold said premises as if this lease had not been made; and the Tenant hereby expressly waives the service of notice of intention to re-enter or of instituting legal proceedings to that end. In case of such default and re-entry, or in case the Tenant shall be dispossessed by or at the instance of the Landlord for any cause, the rent shall be paid up to the time of such re-entry, dispossession or cessation of the term, *pro rata*, and thereafter if demanded by the Landlord, the Tenant shall pay to the Landlord at the end of each month until the date hereinabove specified for the end of the full term provided for herein, the deficiency of the net receipts by the Landlord

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up to that time for rent of said premises (after deducting from the gross receipts the expenses of every kind of the Landlord in connection with letting said premises, and all other costs and payments which in accordance with the terms of this lease would have been borne by the Tenant), as compared with the full amount receivable by the said Landlord up to that time for such rent under the foregoing provisions hereof; but such payments shall be returned to the Tenant at the end of the period herein specified for said full term, so far as may be out of any excess of rents received by the Landlord from said premises over the rents receivable according to the said provisions during said period. No right of redemption shall be exercised under any present or future law in case the Tenant shall be dispossessed for any cause, or if the Landlord shall in any other manner obtain possession of the premises in consequence of the violation of the covenants of the Tenant herein contained. The Landlord may restrain any threatened breach of the covenant to observe the conditions of this lease or of any other covenant herein contained; but the mention herein of any particular remedy shall not preclude the Landlord from any remedy it might have either in law or equity; nor shall consent to one act, which would otherwise be a violation, or waiver of, or redress for, one violation, either of covenant or condition, prevent a subsequent act which would originally have constituted a violation from having all the force and effect of an original violation.

In case the Landlord shall in the exercise of any right hereby granted store any personal property belonging to a Tenant, the Landlord shall not be obliged to store such personal property for more than two months, and thereafter may dispose of such personal property in any way that it sees fit upon ten days' notice in writing mailed in the usual manner to Tenant at the demised premises or to such other address as shall have been designated in writing by the Tenant for that purpose. If the Landlord shall sell any such personal property, it shall be entitled to retain from the proceeds thereof the expenses of the sale and the cost of storage.

COMPLETION OF BUILDING

Eleventh. The parties hereto agree that if the premises be not completed so that the space hereby leased is ready for occupancy at the date upon which the term hereby demised is to begin,

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the rent under this lease shall not commence until the demised premises are ready for occupancy, whereupon this lease and the covenants, conditions and agreements herein contained shall be given full force and effect; and the said allowance of rent shall be received by the tenant in full settlement of all claims which the tenant might otherwise have by reason of said demised premises not being ready for occupancy on said date. The certificate of the architect in charge of the construction of said building shall fix conclusively the date upon which the premises hereby demised are ready for occupancy.

The parties also agree that for the purpose of completing, or of making repairs or alterations in any portion of said building, the landlord may use one or more of the street entrances, the halls, passageways and elevators of said building, provided, however, that there be no unnecessary obstruction of the right of entry to the demised premises while same are occupied.

AND IT IS AGREED that the provisions hereof shall bind and enure to the legal representatives, successors and assigns of the parties.

IN WITNESS WHEREOF, the said landlord has caused its corporate seal to be hereto affixed, and these presents to be signed by one of its officers thereunto duly authorized, and the said tenant has signed and sealed these presents the day and year first above written.

(MODERN OFFICE BUILDING

CORPORATION,)

By (*John Smith, as President.*)

(JAMES BACON.) [L. S.]

Attest: (*Albert Doll,*)

Secretary.

[SEAL]

Executed by tenant in the presence of

(*James Du Vivier.*)

Approved: (*Francis Burke,*)

Renting Manager.

(Acknowledgments)

Rules and Regulations

FOR VALUE RECEIVED, and in consideration of the giving of the within lease, the undersigned guarantees to the landlord, its successors and assigns, the full performance and observance of all the covenants, conditions and agreements therein provided to be performed and observed by the tenant, without requiring any notice of non-payment, non-performance or non-observance, or proof or notice or demand whereby to charge the undersigned therefor, nor shall failure of the landlord to enforce its rights against the tenant, or concessions made by the landlord to the tenant affect the liability hereunder.

Dated, New York.

RULES AND REGULATIONS

1. No tenant shall sell or permit the sale, at retail, of newspapers, magazines, periodicals or theatre tickets, in or from its premises; nor shall any tenant carry on or permit or allow any employee or other person to carry on the business of stenography, typewriting or any similar business in or from its premises for the service or accommodation of the occupants of any other portion of said building, or the business of a public barber shop or a manicuring or chiropodist business, or any business other than that specifically provided for in tenant's lease.

2. The sidewalks, entries, passages, elevators and staircases shall not be obstructed or used by any tenant or the servants, agents or visitors of any tenant for any other purpose than ingress and egress to and from the respective offices.

3. The sashes, sash-doors, windows, glass floors and any lights or skylights that reflect or admit light into the halls or other places of said building, shall not be covered or obstructed, nor shall anything be placed upon or hung from the window sills. The water and wash closets and urinals shall not be used for any other purpose than the purposes for which they were respectively constructed, and the expense of any breakage, stoppage or damage resulting from a violation of this rule shall be borne by the tenant or tenants, who, or whose clerks, agents, servants or licensees shall have caused it. No tenant shall mark, paint, drill into or in any way deface the walls, ceilings, partitions, floors, wood, stone or iron work, or make or permit any improper noises in the building.

4. No sign, advertisement or notice shall be inscribed, painted

Rules and Regulations

or affixed on any part of the outside or inside of the building, except on the directories and sash-doors of offices, and then only of such size, color and style as the Landlord shall determine. Directories or information bureaus will be maintained at the expense of the Landlord.

5. The workmen of the Landlord must be employed by tenants for repairs, painting, lettering, interior moving and other similar work that may be done on the demised premises.

6. No tenant shall do or permit anything to be done on said premises, or bring anything therein which shall in any way increase the rate of fire insurance on said building, or on the property kept therein, or obstruct, or interfere with the rights of other tenants, or in any way injure or annoy them or those having business with them; or conflict with the regulations of the Fire Department, or the fire laws, or with any insurance policy upon said building or part thereof, or with any rules or ordinances established by the Board of Health or other governmental authority. No tenant shall use any other method of heating than that supplied by the Landlord.

7. Only persons authorized by the Landlord will be permitted to furnish ice, drinking water, towel and other similar services to tenants, and only at hours and under regulations fixed by the Landlord.

8. The Landlord shall have power to prescribe the weight and position of safes, which shall, if considered necessary by the Landlord, stand on two-inch thick plank strips to distribute the weight. All damage done to the building by taking in or putting out a safe or any other article of any tenant's office equipment, or due to its being on the premises, shall be repaired at the expense of the tenant. The moving of safes shall occur only between 7 A. M. and 9 A. M. and between 4 P. M. and 6 P. M., upon previous notice to the janitor, and the persons employed to move the safes in and out of the building must be acceptable to the Landlord. No freight, furniture or bulky matter of any description will be received into the building or carried in the elevators, except during hours approved by the Landlord.

9. No tenant shall cause unnecessary labor by reason of carelessness and indifference to the preservation of good order and cleanliness in its premises and in the building.

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10. Nothing shall be thrown by the tenants, their clerks, servants or licensees out of the windows or doors, or down the passages of the building. No animals shall be brought or kept in or about the building.

11. The Landlord shall have the right to prohibit any advertising by any tenant, which, in its opinion, tends to impair the reputation of the building or its desirability as a building for offices or for financial, insurance and other institutions and businesses of like nature; and upon written notice from the Landlord tenants shall refrain from or discontinue such advertising.

12. Each tenant shall promptly and at its expense execute and comply with all laws, rules, orders, ordinances and regulations, of the city, county or state government, and of any department or bureau of any of them, and of any other governmental authority having jurisdiction over the said premises, affecting the tenant's occupancy of the demised premises or the tenant's business conducted thereon.

13. The building will be closed daily at 7 P. M., after which hour the Landlord will have the right to prevent any person from entering or leaving the building unless provided with a pass issued by the Landlord, and any person found in the building after that hour without such pass will be subject to the surveillance of the employees and agents of the Landlord. On written application by any tenant, passes will be issued enabling him to enter or depart from the building after said hour upon presenting same to the watchman. This rule is made for the protection of tenants, but Landlord shall be under no responsibility for failure to enforce the same.

FORM No. 609**Long Term Lease With Building Loan Agreement by Lessor**

THIS INDENTURE, made the (10th) day of (May, 1914,) between (George W. Yates, as sole surviving trustee of the trust created by the last will and testament of William Taylor, deceased,) residing at (800 5th Avenue, New York City,) and hereinafter designated as the landlord, and (Barnard Realty Company, Inc.,) a corporation organized and existing under the laws of the State of (New York,) and having its principal office and

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place of business at (*No. 1580 Broadway, in the Borough of Manhattan, City of New York,*) hereinafter referred to as the tenant,

WITNESSETH, that the landlord has agreed to let and hereby does let, and the tenant has agreed to hire and hereby does hire from the landlord the premises in (*the Borough of Manhattan, City and*) State of New York, described as follows, to wit:

(Description)

Together with the buildings and improvements to be erected upon the above-described premises in the manner hereinafter provided, for a term of (*twenty-one [21]*) years, which said term shall begin on the (*first*) day of (*May, 1914,*) and shall end at midnight of (*April 30, 1935,*) unless sooner terminated as hereinafter provided, at a rental which shall be paid at the rate of (*twenty-one thousand*) dollars (\$21,000) per annum, which said rental shall begin (*February 1, 1915,*) and be due and payable by the tenant to the landlord on said date and thereafter in equal monthly installments of (\$1,750.00) in advance on the (*first*) day of each and every month until the expiration of the term herein granted, or the sooner termination of this lease as hereinafter provided; and upon the execution and delivery of this lease the tenant shall deposit with the landlord collateral security of the value of at least (*ten thousand five hundred*) dollars (\$10,500), which shall be of a kind, nature and character satisfactory to the landlord, and which shall be held by the landlord as security for the true and faithful performance of the covenants herein contained upon the part of the tenants to be kept and performed with respect to the rent which shall accrue and be payable hereunder.

It is agreed that, when the tenant shall have completed, according to the true intent and meaning of the provisions hereinafter contained, the building provided by this agreement to be erected upon the said premises, and has made leases to responsible tenants of portions of said building, which said leases and tenants are subject to the approval of the landlord, whereby the income from said premises, exclusive of overhead and carrying charges of said premises will amount to (*twenty-one thousand*) dollars (\$21,000) per annum; then and in that event the said collateral security hereinabove mentioned shall be returned by the landlord to the tenant. During the time the above-mentioned security is held by

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the landlord the same shall be in addition to any other security which may be delivered by the tenant to the landlord in pursuance of this lease or any part thereof.

Should the tenant make default in the payment of the rent as above set forth and while said collateral security is held by the landlord, the said landlord may sell the same, either at public or private sale, and apply the proceeds thereof in payment on account of any rent which may then be due by the tenants to the landlord, and the tenant agrees to pay to the landlord any deficiency between the amount of the proceeds of any such sale and the amount of rent then due and unpaid. The rent payable upon this instrument shall begin and be due and payable to the landlord upon the (*first*) day of (*February*) next ensuing and monthly thereafter as hereinbefore provided.

The tenant covenants and agrees:

First. To pay the rent as aforesaid in the manner hereinbefore set out.

Second. To make all repairs, both exterior and interior, to the building to be erected upon the above-described premises, including the sidewalks, and the shoring of walls of adjoining buildings, and of the building to be erected upon the demised premises, and also all repairs to any and all the equipment and other apparatus which from time to time, during the term of this lease, may become a part of or be installed in or upon the building to be erected upon the said premises; and the landlord shall not, during the term of this lease, be liable for any manner of repairs in or about said premises, or to any part of the street, sidewalk or walls adjacent or appurtenant thereto. In case of default by the tenant under this paragraph, then and in that event the landlord, his successors and assigns may make such repairs as may be necessary, and all necessary expenses consequent thereupon shall be borne by the tenant and shall be deemed to be and be collected as additional rent hereunder, and the same shall be due and payable by the tenant to the landlord immediately after the costs of any such repairs shall have been paid and the amount thereof be due and payable by the landlord; and the landlord shall have the right to enter in and upon said premises to make any and all such repairs. If during the term hereof the tenant shall be put to any expense or loss by reason of any changes made by public authority in the

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street, sidewalks or otherwise, and upon account of which the landlord is entitled to and is awarded and receives damages from the municipality or otherwise, the tenant shall be made whole for such expenses or losses to an amount equal to, but not exceeding, the amount received by the landlord, but if such damage be based on diminution of the landlord's interest in the fee of such premises this provision shall not apply, and nothing herein contained shall impose any obligation on the landlord to take any affirmative steps to recover any such expenses or damage, and in any affirmative action taken by the landlord upon the tenant's written request, he shall be indemnified by the tenant for the expenses and costs to which the landlord may be put, in excess of any award.

Third. In case the tenant shall have repairs made to the building, or in the event of a demolition of the existing building now on said premises, and a lien shall be filed against the said premises or any part thereof, the tenant shall forthwith take such action as will remove the lien from the said premises, and in default thereof for (*ten*) (10) days the landlord may pay the amount of any such lien, or discharge the same by deposit or by bond, and the amount so paid or deposited for the expense of and liability on any bond procured for the discharge of any such lien shall be deemed additional rent reserved under this lease, and shall be payable, with interest from the date of any such payment, or bond liability incurred, upon the next date upon which rent shall accrue under this lease.

Fourth. To make good any and all damage resulting to said premises and the building to be erected thereon resulting from misuse or neglect.

Fifth. To take good care of the premises and the building to be erected thereupon and to suffer no waste or injury, and not to use the premises nor any part thereof, nor to suffer the same to be used for any purpose deemed disreputable or contrary to law.

Sixth. The tenant covenants to pay and discharge within (*sixty*) (60) days after the same shall be due and payable, all duties, taxes, assessments (except as hereinafter set out) and water rates, payments and charges of every kind or nature whatsoever, extraordinary as well as ordinary, which shall or may, during the term hereby granted, be levied, charged, assessed or imposed upon or grow due or payable out of or for the demised premises and the building to be erected thereupon or any part

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thereof, or upon the rent or income thereof, whether the same be under the term or upon the reversion, or upon the income or either or both, which shall or may be payable or due and owing by virtue of any present or future law, rule, requirement, direction or ordinance of the (*United States of America*,) of the State of (*New York*,) or of the corporation of the City of (*New York*) or of any other lawful authority whatsoever (provided that any such payment may lawfully be made by the tenant, and if any such payment herein provided for is now prohibited by law, then this clause as to such prohibited payment shall be inapplicable and shall not have reference thereto, otherwise to be and remain in full force and effect) ; so that the premises demised and the interest of the landlord thereunder shall, so far as it may lawfully be done, be free from all such duties, assessments, water rates, payments and charges as aforesaid and that this lease shall yield the landlord not less than the rents reserved upon the annual basis hereinbefore contained throughout the term hereof. If, during the term of this lease, there should be levied upon the above-described premises, by the City of (*New York*,) any assessment for local improvements, the amount of which shall exceed (*one hundred*) dollars (\$100,) then as and so often as any such assessment exceeding said sum of (*one hundred*) dollars (\$100) shall be levied, the same shall be paid by the landlord; and from the time of levying any such assessment the annual rental payable under this lease shall be increased by an amount which shall be equal to interest at the rate of (*six*) per centum (6%) per annum on the amount of any such assessment paid by the landlord and such increased rent the tenant agrees to pay in equal monthly installments with the installments of original rent hereinbefore reserved.

Each and every other assessment for local improvement laid or levied on said premises shall be paid by the tenant as other similar payments are hereinbefore provided for.

Seventh. The tenant agrees that it will, at all times during the term of this lease, insure and keep insured the building to be erected upon the said premises for an amount equal to at least (*ninety*) per centum (90%) of the actual cash value thereof, exclusive of foundations, in good and solvent insurance companies satisfactory to the landlord against loss or damage to the building to be erected on said premises and any other improvements and appurtenances, by fire, and the policies for such insurance shall

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be delivered to the landlord or to the nominee of the landlord, and shall provide for the payment to the landlord, and any mortgagee of the fee of the premises who may be designated by the landlord, of the amount of any loss which may be payable and collectible under any such policies of insurance and all cost, expense and premiums upon any such policies of insurance shall be paid by the tenant; the percentage of insurance provided for above is upon the understanding that the tenant will equip and maintain a sprinkler system in said building. All policies of insurance shall be in the custody of the landlord or of mortgagees designated by the landlord.

During the demolition of the existing buildings upon said premises and during the erection of the building hereinafter provided to be erected upon said premises and throughout the term of this lease the tenant will, at its own cost and expense, procure insurance payable to the landlord in good and solvent insurance companies satisfactory to the landlord, whereby the landlord and tenant will be indemnified and saved harmless from any damage, loss or liability of any kind or nature whatsoever under and by virtue of any Employers' Liability Law, whether State or national, whether now in effect or which may be enacted during the term of this lease.

In case of fire the tenant shall give immediate notice thereof to the landlord and shall take such steps as may be necessary to protect the building erected upon said premises from depredation or further damage, and shall give all information and aid in its power to assist the landlord in collecting the loss from the insurers. In the event of partial or total destruction to the leased premises by fire, the rent under this lease shall not be diminished or cease, but such rent shall nevertheless be paid by the tenant, and this lease shall not cease or terminate. In the event of fire which shall damage or destroy the building to be erected upon the said premises, or which shall at any time stand thereon, during the continuance of this lease, the tenant shall repair, reconstruct and replace the building, so as to restore the same to the condition existing before any such fire, and it is understood and agreed that any sums of money collected by the landlord from the insurance companies by reason of any such damage or loss by fire will be applied by the landlord toward the cost of any such repair, replacement or reconstruction. The provision hereinbefore con-

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tained as to the custody of fire policies applies likewise to policies affecting employers' liability and rent.

The tenant agrees that it will not put the said premises or suffer the said premises to be put to any use which will render the building to be erected thereupon uninsurable.

At the end or other termination of this lease the tenant shall quit and surrender the leased premises to the landlord or his successors together with any additions and improvements thereon, other than detachable movable business fixtures, in as good order and condition as proper maintenance and care of said premises will permit.

Eighth. The tenant agrees that it will, during the term of this lease or any renewal thereof for the account of, and as further security to the landlord, insure the rent hereunder for the full amount thereof in good and solvent insurance companies satisfactory to the landlord against loss of rent by fire, such policies to provide for the payment to the landlord of any amounts which may be collected from such insurance companies, and the landlord shall, in the case of damage to or destruction of, the leased premises, apply any sums received from the insurers of the rent to the rent payable under this lease by the tenant to the landlord during the period for which the premises hereby leased shall be untenable owing to such damage or destruction, repaying to the tenant any amounts so received over and above the rent payable hereunder from the tenant to the landlord during the said period, and the tenant agrees to remain liable for and pay any deficiency between the amount so collected and the rent reserved by this lease.

It is understood and agreed that in the adjustment by the landlord with any insurance company for the amount of loss to said premises by fire, and to the loss of rents occasioned thereby, the tenant shall be represented, and should the insurance company and the landlord agree upon the amount of any such loss by reason of any such damage, and such agreement should not be satisfactory to the tenant, the landlord will, if the same may lawfully be done, assign to the tenant the claim of the landlord against any such insurance company upon receiving from the tenant a sum equal to the amount of loss agreed upon to be payable to the landlord by such insurance company under any such agreement as aforesaid between the landlord and insurance company.

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Ninth. At all times during the term of this lease or any renewal thereof, the tenant agrees to insure and keep insured in favor of the landlord all plate glass which may be in the store fronts, windows and doors of the building to be erected upon the premises so as to procure the replacement of any such glass as may be broken or destroyed, and to furnish the landlord policies of insurance covering the same.

Tenth. In case the tenant fails to furnish such insurance as above provided or to pay the premium or premiums upon the same, or in case the tenant shall fail to pay any or all the duties, taxes, assessment or water rates, payments and charges at the times and in the manner hereinbefore provided for, the landlord may in each and every case procure the said insurance or pay any such amounts and penalties thereon, and may add the amount of each and all of such premiums or payments so made by the landlord to the next installment of rent falling due under this lease, together with interest thereon from the date of payment, and said payments and interest shall be additional rent reserved hereunder payable on the next day provided for the payment of rent succeeding the payment of such premium or other payments by the landlord, and for any default in any such payments which are deemed additional rent as aforesaid, the landlord shall have the same rights and remedies as if the same were original rent as hereinbefore set out.

Eleventh. The tenant shall pay and discharge, within (*sixty*) (60) days after the same are due and payable, such taxes for the second half of the year 1914, as will become a lien upon the said premises on the first day of November, 1914, notwithstanding the fact that the building hereinafter provided for to be erected upon the said premises shall not at such date be completed or ready for occupancy. Such taxes as shall become a lien on said premises upon May 1, 1914, to wit: taxes for the first half of the year 1914, are to be paid by the landlord.

Twelfth. The tenant agrees to admit representatives of the landlord in and to said premises at all times for the purpose of making such alterations or repairs, including shoring of walls in case of an adjacent excavation, as may be necessary and proper for the safety and preservation of the building on said premises, and nothing herein contained shall be construed as imposing any obligation or liability upon the landlord to make any such alterations, shoring or repairs.

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Thirteenth. The tenant agrees that it will at its own cost and expense, during the term of this lease, comply with and execute any and all laws, rules, regulations, ordinances, orders and requirements whatsoever of the city, county, state or national government or any of their respective bureaus applicable to the said premises and of the New York Board of Fire Underwriters or any board taking its place and performing like functions, and the tenant further agrees that it will protect and hold harmless and indemnify the said landlord of and from any and all claim or claims for expense and damages of every kind and nature arising out of any failure to comply with any or all of any such laws, rules, regulations, ordinances, orders and requirements.

Fourteenth. The tenant agrees that in the demolition of the present building on said premises, and that in any repairs or alterations which may be made to the building to be erected upon the said premises, the tenant shall comply with the rules, ordinances, laws, regulations and requirements of any and all of the departments of the city, county, State or national government which may be applicable thereto, and that any such improvements will be of a good and workmanlike character and shall be such as will not render the title to the above-mentioned premises unmarketable or subject the premises or the landlord to a claim for damages or correction upon the part of any authority having jurisdiction thereof.

Fifteenth. The tenant agrees that, unless written consent of the landlord shall first be obtained, not to

(a) Sublet the premises or any part thereof for any business which may be obnoxious or detrimental to the neighborhood;

(b) To use the said premises or any part thereof for any purpose deemed extra-hazardous;

(c) Assign or mortgage this lease.

Sixteenth. The tenant agrees to indemnify and save harmless the landlord from and against any and all liability, losses, damages and expenses, cause of action, suits, claims and judgments arising from injury to person or property of any and every kind and nature, and from any matter or thing growing out of the demolition of the present building, or growing out of the construction and occupation of the building to be erected upon the said premises, or arising or growing out of the use, management,

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possession or control of the said demised premises or of any building thereon or of the streets, sidewalks, or walls adjacent thereto occasioned by the tenant, the agents, employees and assigns of the tenant, or by subtenants, or by their subtenants, their agents or employees, subtenants or employees respectively, or which may be occasioned by any person or thing whatever at any time during this lease.

Seventeenth. The tenant agrees to hold the landlord harmless from and indemnify him against all damage, including counsel fees and expenses to any person by reason of an act commonly known as the "Civil Damage Law," or by reason of section 42 of the Liquor Tax Law or any other act of similar import, now in force or hereafter enacted. Should any claim be made against the landlord under any civil damage or other law, as set out in this clause, notice of such claim shall, as soon thereafter as is reasonably convenient, be given to the tenant, and should legal action be begun against the landlord, thereupon the tenant and its counsel may participate in the defense of any such action, but any such defense, at the option of the landlord, shall be under the direction and control of the counsel for the landlord, learned in the law; but nothing herein contained shall be construed to imposed any liability or expense upon the landlord by reason of any such direction or control of such defense, or otherwise.

Eighteenth. That in case of default in the payment of any rent hereinbefore provided for a period of (*fifteen*) (15) days, or in case of default in the payment of any of the additional rents reserved herein, or in making any other payment under this lease, or in the performance on the part of the tenant of any of the covenants contained herein, on its part to be kept and performed, neither the tenant nor any other person, firm or corporation shall have, or claim, any right of redemption in said premises under sections 2256 or 2257 of the Code of Civil Procedure, nor under any law now in force, or hereafter enacted, after (*ninety*) (90) days shall have expired from any termination of this lease by re-entry of the landlord, or by the landlord's obtaining possession of the premises under summary proceedings or otherwise in any lawful manner, and when (*ninety*) (90) days shall have expired after any such event the tenant, for itself and every such person or corporation hereby releases any and all such right of redemption and irrespective of whether the same exists under the law or

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in equity. And the tenant, for itself and every such person or corporation, agrees that in the event of an action of ejectment brought by the landlord, his successors or assigns, for failure to perform any of the covenants herein, or in any renewal hereof, the tenant for itself or any such person or corporation waives all rights to any second or other trial as matter of right or favor under any law now existing, or which may hereafter be enacted, but nothing herein contained shall be construed as waiving tenant's right to a new trial granted upon appeal.

Nineteenth. The landlord or his agent may at any time during the continuance of this lease show said premises at any reasonable hour to persons wishing to purchase the same; also during the three months prior to the expiration of this lease or renewal, the tenant shall allow the landlord or his agents to show the premises to persons wishing to hire the same, and to place on the exterior of the premises notices offering the premises to let or for sale, and such notices shall remain without hindrance or molestation.

Twentieth. This lease, and all rights thereunder, is and shall be subject and subordinate to the lien of any mortgage or mortgages which may at any time during the term hereby granted be executed by any owner of or holder of the title to the above described premises and be made a lien upon the same; and is and shall be further subject to any building loan agreement in pursuance of which any such mortgage may be made; provided that the total principal indebtedness of any such mortgages which at any time may be a lien upon said premises prior in lien and right to this lease, shall not exceed the sum of (*two hundred thousand*) dollars (\$200,000,) and any such mortgage and building loan agreement so executed may cover and have reference to, and be a lien upon, the building to be erected upon the described premises by the tenant as hereinafter provided, and any such mortgage or mortgages may be changed and replaced and extended, either in like amount or otherwise, and this lease and all rights thereunder shall be and remain subject and subordinate to any such mortgage or mortgages. The tenant, for itself, its successors and assigns, agrees to execute and deliver any agreement which may be required by any mortgagee, so as to carry this clause into full force and effect. Should the landlord at any time be in default in the payment of interest on any mortgage or mortgages which he, or his successors may, during the term hereof, place upon said

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premises pursuant to the foregoing clause for a period of (*thirty*) days, such interest may, at the tenant's option, be paid by the tenant to the holder of any such mortgage upon which interest is in default, and the amount of such payment, with interest thereon, may be charged against the rent next or subsequently falling due under the terms of this lease.

Twenty-first. No structural alterations, additions or improvements shall be made in or to the building to be erected upon the said premises without the consent of the landlord in writing and upon plans and specifications submitted to and approved by the landlord. It is expressly and distinctly understood and agreed between the parties hereto:

(a) All improvements made in, to or on the premises and all additions thereto and to the machinery and appurtenances, except detachable movable business fixtures, shall, upon the delivery of the same to the said premises, become the unencumbered property of the landlord and remain and be surrendered with the premises as part thereof at the termination of this lease.

(b) This lease is subject and subordinate to:

(1) State of facts shown on a survey made by
dated April 28, 1913;

(2) That no representations have been made herein by the landlord that he has or could obtain and maintain vaults under the sidewalks of said premises.

(c) The landlord shall not be liable for any personal or property damage caused by or to other tenants or persons in the building resulting from electricity, water, rain, snow or gas which may leak or flow from any part of the building, or from the pipes or plumbing work of the same, or from any place or cause, or for any interference with the use of the premises or any part thereof caused by the operations of the City of (*New York*) or other public authority in the construction of any public work.

(d) The landlord shall not be responsible for any latent defect or change in the condition of the existing building on said premises or in any building which may be erected thereon, nor shall the rent be withheld or diminished on account of any such defect or change.

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(e) If the tenant shall make default in fulfilling any of the covenants and conditions of this lease or in making any payment hereinafter provided for or in case the tenant abandons the premises, the landlord may re-enter the said premises and remove all persons therefrom, either by any suitable action or proceeding at law or by force or otherwise without being liable to indictment, prosecution or damage therefor; and in any such case the landlord may give the tenant notice of his election to end the term of this lease and if such default be not immediately made good, the term hereby granted shall expire and all right of occupation hereunder on the part of the tenant shall end and the tenant will quit and surrender the said premises to the landlord, or, at the landlord's option, the landlord may relet the premises as the agent of the tenant and receive the rents thereof, applying the same, first, to the payment of any such expenses as he may be reasonably put to in re-entering and leasing said premises, and then to the payment of the amount which would be payable as rent and other payments which might or would become due and payable by the tenant according to the terms of this lease if the same had not been terminated, and the balance, if any, at the expiration of this lease or any renewal thereof, shall be paid over to the tenant.

(f) In case of re-entry, or of termination of this lease by summary proceedings, or other legal proceedings instituted by the landlord, or on behalf of the landlord, whether the premises be relet or not, the tenant shall remain liable until the time when this lease or renewal thereof would have expired but for the termination thereof, for the amount which would have become due as rent and additional rent as reserved herein if this lease had not been terminated, less the avails of reletting, if any there be, and shall pay the same monthly, or otherwise as hereinbefore provided for payment of rent.

(g) The failure of the landlord to insist in any one or more instances upon strict performance of any of the covenants or conditions of this lease, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or option, but the same shall continue and remain in full force and effect.

(h) All notices provided for in this lease shall be given in writing, and may be given by mailing and depositing the same at

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any post office, station or letter box, enclosed in a postpaid envelope addressed to the tenant at the demised premises.

As further and additional consideration moving from the tenant to the landlord hereunder, and to induce the landlord to enter into this lease, the tenant further agrees as follows, to wit:

First. That it will, with all due speed and diligence, demolish and remove from the above-described premises the building now erected thereon, and will then straightway begin and will, with like speed and diligence, erect upon said premises a twelve-story and basement brick and stone store and loft building, of steel frame, and of fireproof construction, and which shall conform to plans and specifications therefor now in course of preparation by (*Messrs. Warren & Curtis,*) and which plans and specifications shall be subject to the approval of the landlord and tenant; it being understood and agreed that said building is to be of a character and quality and similar, but not inferior, to the building now erected upon the premises (*Nos 31 and 33 East 32nd Street, New York.*)

Said building, and the plans and specifications therefor shall conform with all laws and regulations both State and municipal, and the tenant shall, upon obtaining the landlord's approval of the said plans and specifications, continuously proceed with the erection upon said land of the said building so that the same will be completely finished and ready for use and occupancy on or before February 1, 1915.

In the event that said building to be erected by the tenant should not be wholly completed and ready for occupancy by said February 1, 1915, through no fault of the tenant, but by reason of the fault of the landlord, or by reason of strikes, lockouts, act of God or the public enemy, then the time lost through any such cause shall be added to the time herein fixed for the first payment of the original annual rent reserved herein, provided the tenant employs only union labor in the construction of said building and bears the carrying charges of the said premises and building until the said building is completed and ready for occupancy.

Second. That said building when completed, and all materials entering into the construction thereof during its course of erection, shall be and become, as said materials are delivered upon the said premises, the free and unencumbered property of the landlord, free and clear of any lien, chattel mortgage of any kind or nature

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whatsoever — the intent being that said materials and said building shall be and become real estate and the property of the landlord without any claim thereon by the tenant or other person as to the ownership thereof.

Third. That any and all sums necessary and required to complete the said building according to the said plans and specifications over and above the sum of (*one hundred and sixty thousand dollars* (\$160,000))—(to be supplied by the landlord as hereinafter set out)—shall be paid and advanced by the tenant as additional rent hereunder and without claim therefor either against the landlord or the said premises, and a failure of the tenant to make such advances or any of them, as required by the progress of said building or pursuant to contracts made by the tenant incident to the erection of said building, shall be deemed a default hereunder, and all right of the tenant under this lease shall immediately cease and determine and the landlord shall have any and all rights that he would possess according to law upon the default by the tenant in the payment of the original rent hereunder.

Fourth. That during the construction, and until the completion of the building to be erected upon said premises by the tenant, the tenant shall pay to the landlord, as additional rent hereunder, interest at the rate of (*six per cent* (6%)) per annum upon such sums of money as shall, pursuant to the terms of this lease, be advanced by the landlord to the tenant; such interest is to be computed from the respective dates upon which any such advances are made and shall be payable on (*February 1, 1915,*) and upon the first day of each month thereafter until the completion of said building.

Fifth. That the tenant will well and truly observe the following provisions in and about the construction of said building:

(a) The building shall be constructed in strict accordance with the plans and specifications approved and agreed upon by the parties hereto;

(b) The landlord or his architect shall have sufficient notice to permit an examination of the bottom of the trenches before foundation concrete is started;

(c) The steel entering into the construction of the building shall be painted after construction a field coat additional to the shop coat, and of a quality of paint approved by the landlord;

(d) The details of the floor construction and framing plans

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shall be submitted to the landlord before the contract therefor is let;

(e) Permanent stairs with temporary treads shall be erected as rapidly as the frame-work is erected, but if the permanent stairs shall be delayed, temporary plank stairs shall be erected in lieu thereof;

(f) After floor filling is completed and before the wood flooring is laid in each story, sufficient notice shall be given to the landlord to enable inspection of the same;

(g) The landlord shall have sufficient notice when tests of the plumbing and framing systems and structural work are to be made, and any further tests required by the landlord shall be made by the contractors for such work under the direction of the landlord, at the expense of the tenant;

(h) The frame-work of the building shall be of steel and all connections within a three foot radius of columns shall be riveted;

(i) The landlord or his architect shall be given an opportunity to examine all cast iron work used in the construction of the building before it is painted, and no cast iron members shall be used which are not approved by the landlord and the building department. Any such member which may not have been so approved which shall be incorporated in the building shall be removed whenever required by the landlord;

(j) During the construction of the building, the landlord and the holder of any mortgage placed on said premises by the landlord, and the landlord's architects and engineers, may from time to time, inspect the building and shall be furnished, if required by them with copies of all plans, detailed plans, shop drawings and specifications relating to the construction of the building, and they may examine all plans, detailed plans, shop drawings and specifications which are kept at the work;

(k) No advance to be made by the landlord shall be due unless all work usually done at the stage of construction when the advance is payable under the terms of the schedule of payments hereinafter set out be done in a good and workmanlike manner, and all materials and fixtures usually furnished and installed at such stage of construction, be furnished and installed; nor unless all iron work and construction be approved by an engineer satisfactory to the landlord;

Long Term — With Building Loan

Parts or the whole of any installments to be advanced by the landlord may be made before they become due if the landlord or the holder of any mortgage placed by the landlord believe it advisable so to do, and all such advances or payments shall be deemed to have been made in pursuance of this agreement and not to be modifications thereof. The making of any advance or any part of an advance shall not be deemed an approval or acceptance by the landlord or the holder of any such mortgage of the work theretofore done. The landlord or the holder of the mortgage may make any advances or parts of any advances after the happening of any of the events specified in the next clause of this agreement without thereby waiving the right to declare a default of this lease and without becoming liable to make any other or further advance. All advances are to be made at the office of and the tenant is to give the landlord (*three*) (3) days' notice in writing before demanding any advance;

(1) If the construction of the building is not carried on with reasonable dispatch, or should be discontinued at any time, the landlord or the holder of any mortgage placed by the landlord, may protect or complete the building. If any mechanic's lien or liens should be filed against said premises, such holder or the landlord may retain or deposit in behalf of the tenant, with the clerk of the county in which said premises are situated, sums sufficient to discharge such lien or liens; if the building be not completed or be untenanted, such holder or the landlord may take possession thereof, employ watchmen to protect the building from depredation or injury, and may preserve and protect the fixtures and property therein; if any taxes, assessments or water rates affecting said premises should become due and remain unpaid, the landlord may pay the same; any sums paid or expended in accordance with any of the foregoing provisions of this clause shall be deemed to be advanced to the tenant and at the option of the landlord may be deducted from any advance thereafter becoming due;

(m) Whenever and as often as any of the following events occur before the sum of (*one hundred and sixty thousand*) dollars (\$160,000,) is fully advanced, all obligation on the part of the landlord to make or procure any further advances shall cease and if the landlord so elect, he may at once re-enter and take

Long Term — With Building Loan

possession of the said premises, anything herein contained to the contrary notwithstanding;

(1) If a copy of the plans and specifications of the building and of any modifications thereof be not furnished to the landlord whenever he shall require the same;

(2) If the plans and specifications shall not be satisfactory to the landlord;

(3) If the plans be not approved by the building department before an advance is demanded;

(4) If the building be not erected in strict accordance with the plans and specifications approved by the landlord;

(5) If the materials or construction of the building be not satisfactory to the landlord or his architects;

(6) If any materials, fixtures or articles used in the construction of the building or appurtenant thereto should be purchased by the borrower or any contractor or other person furnishing labor or materials to the building, so that the absolute ownership of such materials, fixtures or articles will not vest in the landlord immediately on delivery at the building;

(7) If the tenant do not disclose to the landlord the names of all persons with whom the borrower contracts or intends to contract for the construction of the building or the furnishing of labor or materials therefor and obtain the acceptance by the landlord of such persons as contractors upon the building;

(8) If the borrower does not produce upon demand the contracts, bills of sale or agreements or any of them under which the tenant claims title to the materials, fixtures and articles used in the construction of the building and appurtenant thereto;

(9) If the tenant should not proceed continuously with the erection and completion of the building (stoppage by reason of actual strikes, lock-outs and other conditions over which the tenant has no control, excepted);

(10) If a survey should show that the building encroaches upon property other than that described herein, to an extent deemed material by the landlord;

(11) If there should be at any time any note or notice of violation of law or of any State or municipal regulation or ordinances filed in or issued by a public department or authority against the building or against the tenant by reason of any matter in or about the construction of the building;

Long Term — With Building Loan

(12) If the building should be materially injured or destroyed by fire or other casualty;

(13) If the borrower does not observe the provisions of the clauses of this agreement;

(14) If the tenant should assign this contract or any interest therein, or any rights to receive any payment or portion of a payment herein provided for, or give or issue an order on the landlord for the payment of any money payable under this agreement;

(15) If a petition in bankruptcy should be filed by or against the tenant;

(16) If the borrower should encumber this lease or any interest therein;

(17) If the premises should become encumbered by any lien or encumbrance not herein provided for, through any act of the tenant, whether such act be an act of omission or commission;

(18) If default should be made in the payment of any sum herein provided to be made by the tenant;

(19) At the option of the landlord no advance need be made so long as there is noted in any municipal or other public department, any note or notice that the building violates any provision of law or any ordinance applicable thereto. The tenant shall furnish to the landlord official searches made in such departments whenever required so to do;

(20) So much of any advance as may be necessary may be applied to the payment of any sums owed by the tenant for surveys, architect's fees and other proper charges, after the same shall be due and payable.

All notices herein provided for to be given to the landlord in connection with and concerning the construction of said building shall be sufficient if given to (*Messrs. Warren & Curtis,*) architects for the landlord, and their approval and acceptance of any material and work herein provided for to be approved by the landlord shall be sufficient and be deemed the acceptance and approval of the landlord.

Sixth. That the tenant shall, to the extent of (*four thousand*) dollars (\$4,000) and as additional rent hereunder, pay the fees, expenses and charges of (*Messrs. Warren & Curtis,*) for drawing the plans and specifications of the buildings, the inspection thereof

Long Term — With Building Loan

during the construction; other expenses and charges of this character, not incurred by the tenant and arising out of the construction of the building in pursuance hereof shall be paid by the landlord. But the landlord may, at the expense of the tenant, procure surveys of said premises to be made by a surveyor satisfactory to the landlord as and when he may be advised surveys are proper and necessary for his protection.

The tenant shall pay, as additional rent hereunder, to the landlord, the further sum of (*five thousand*) dollars (\$5,000,) to reimburse the landlord to that extent for such fees, expenses, disbursements and charges as the landlord may or shall incur in placing any mortgage or mortgages, or renewals or extensions thereof, on the said premises, for the purpose of obtaining funds with which to procure the advances herein provided for to be made by the landlord to the tenant towards the erection of the building to be erected on said premises, or other purposes; and said sums of (*four thousand*) dollars (\$4,000) and (*five thousand*) dollars (\$5,000) respectively, and any other payments provided for and set out in this paragraph "Sixth," shall be due and payable by the tenant to the landlord on the tenth day after payment of said sums shall be requested by the landlord of the tenant.

Seventh. That the tenant shall, before this lease shall take effect and be binding upon the landlord, furnish and deliver to the landlord such security satisfactory to the landlord as will, in the judgment of the landlord, provide for and secure the performance by the tenant of each and every covenant herein contained on its part to be kept and performed, but such security shall not be deemed to release the tenant or any guarantor hereof of any liability hereunder, and said security shall be returned to the tenant upon the full completion of the building, and upon the payment of the cost of the same and of the materials and fixtures entering into the construction thereof.

THE LANDLORD COVENANTS TO AND WITH THE TENANT

First. That if the tenant proceeds with the performance of the covenants hereinbefore contained according to the true intent and meaning thereof, the landlord will advance or procure to be advanced to the tenant toward the construction of the building to be

Long Term — With Building Loan

erected on the premises, the sum of (*one hundred and sixty thousand*) dollars (\$160,000,) to be advanced in installments as set forth in "Schedule A," hereto attached and made a part hereof, but each and every such advance is, and shall be, conditioned as hereinbefore set forth.

Second. The landlord will suffer no default in the payment of the principal sum of any mortgage that may be placed on said premises by the landlord.

Third. That if, and so long as the tenant pays the rents and additional rents reserved under this lease and in all respects observes the terms hereof, the tenant shall quietly enjoy the demised premises and every part thereof, subject, however, to the terms and provisions hereof.

IT IS FURTHER COVENANTED AND AGREED by and between the parties hereto that this lease, in each and every of its terms and provisions, and all liability of the landlord thereunder, is subject to and contingent upon the landlord's obtaining the consent, permission and direction of the supreme court of the State of New York to make and enter into this lease. Should such consent, permission and direction of the Supreme Court be withheld upon the landlord's application to the court for the same, then this lease is as to the landlord and tenant void and of no effect; should such consent, permission and direction of the court be granted, then written notice thereof shall be given to the tenant, and from the date of such notice, this lease shall be binding upon the parties hereto, their respective successors and assigns, and the said lease shall be in full force and effect. The landlord will, with due diligence, make application to the Supreme Court of the State of New York, County of New York, for the consent, permission and direction contemplated hereby, and will, with all reasonable despatch, prosecute such proceedings as may be necessary until the consent, permission and direction is either granted or withheld.

IT IS FURTHER COVENANTED AND AGREED by and between the landlord and the tenant that this Indenture of lease and all of its terms, covenants, conditions and provisions shall apply to and bind the landlord and the tenant, their respective successors and assigns.

Parcel of Land

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first above written.

[SEAL]

(GEORGE W. YATES),
(As Sole Surviving Trustee, Etc.)
(Barnard Realty Company, Inc.),
By (George Gray), President.

Attest:

(Albert Burnard),
[SEAL] Secretary.
(Acknowledgment)

FORM No. 610

Lease of Parcel of Land

BY THIS LEASE executed this (*twenty-seventh*) day of (*April*, 1916,) in consideration of the following conditions and covenants entered into by the parties hereto for themselves, their heirs, successors, legal representatives and assigns, (*John Cox*) of (*Roxbury, Mass.*) as lessor, does lease unto (*Investors Realty Company, a corporation duly organized and existing under the laws of the State of New York,*) as lessee, ALL that certain, (*etc.*)

(Description)

TO HAVE AND TO HOLD the said above-described and hereby leased premises unto the said lessee for a term of (*twenty*) (20) years, commencing on the (*first*) day of (*May*, 1916,) and ending on the (*30th*) day of (*April*, 1936,) yielding, rendering and paying therefor unto the said lessor yearly and every year during the said term hereby granted the yearly rent or sum of (*six hundred*) (\$600) dollars in equal (*quarter yearly*) payments of (*one hundred and fifty*) (\$150) dollars each on the first days of (*August, November, February and May*) in each and every year of said term [except the last (*quarter yearly*) payment, which is to be made on the (*30th*) day of (*April*,) the day of the expiration of the term,] in addition to all taxes, assessments and water rates and other charges which may be imposed on said premises during the term;

Parcel of Land

PROVIDED ALWAYS, NEVERTHELESS, that if the yearly rent above reserved, or any part thereof, shall be behind or unpaid on any day of payment whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants and conditions herein contained on the part and behalf of the said lessee to be paid, kept and performed, then and from thenceforth it shall and may be lawful for the said lessor into and upon the said demised premises and every part thereof, wholly to re-enter and the same to have again, repossess and enjoy as in his first and former estate anything herein contained to the contrary in anywise notwithstanding;

PROVIDED ALWAYS and the said lessee does hereby covenant and agree to and with the said lessor in manner following, that is to say: That the said lessee during the said term hereby granted, shall and will well and truly pay unto the said lessor the said yearly rent or sum of (*six hundred*) (\$600) dollars above reserved on the days and times and in the manner mentioned and prescribed as aforesaid for the payment thereof, without any deduction, fraud or delay, according to the true intent and meaning of these presents.

Second. That the said lessee shall and will at its own proper cost and charge bear, pay and discharge all such taxes, assessments, water rates, expenses of water meters, their connections and settings, and all other payments of what kind or nature, soever as shall during the term hereby granted, be imposed on or grow due or payable out of or for or by reason of the said demised premises or any part thereof, by virtue of any present or future law, ordinance or authority whatsoever, as soon as they become due and payable and will keep said demised premises free, clear, discharged and unencumbered from all taxes, assessments and encumbrances of what nature or kind soever; it being intended that said sum shall be net rent to said lessor.

Third. That the said lessee shall not at any time or times hereafter sell, assign, or otherwise transfer or set over this lease or said demised premises or any part thereof, or any of its terms, time or interest therein, to any person or persons whatsoever, without the permission or consent of the said lessor for that purpose, in writing under his hand and seal, first had and obtained, the granting, giving or waiving any one or more of such consents shall not render unnecessary any subsequent consent or consents; and that

Parcel of Land

the said lessee will comply with all the laws, regulations and ordinances of the State of (*New York*,) and all other public ordinances of the State of (*New York*,) and all other public authorities which are now or may hereafter be in force and applicable to said premises during said term, and that the said lessee will during said term, at its own proper cost and charge, well and sufficiently level and pave and keep in order such part of the streets on which said lots are bounded, and to the middle thereof, including the sidewalk or walks in front of the said lots, in such sufficient and proper manner as may be required by public authority, and will also have proper connections made and maintained with the sewers.

Fourth. That the said lessee will on or before the last day of said term, or other sooner determination of the estate hereby granted, remove from the said premises any and all buildings now or which may hereafter be erected on the same and will enclose the said land within by a good and sufficient fence, and will well and truly surrender and deliver up the said hereby demised premises so enclosed into the possession of the lessor without fraud or delay.

IN WITNESS WHEREOF, the party of the first part to these presents has hereunto set his hand and seal and the party of the second part has caused its corporate seal to be hereunto affixed and these presents to be signed by its (*president*) and (*secretary*) the day and year first above written.

[L. S.]

(*JOHN COX*,)
(*INVESTORS REALTY COMPANY*,)

By (*William Smith*,) (L. S.)
as President.

(*Abel White*,)

Secretary.

Signed, sealed and delivered in the presence of
(*HENRY HARRIS*) as to (*JOHN COX*.)

(Acknowledgments)

Tenant to Pay All Charges

FORM No. 611**Clause That Tenant is to Pay All Charges—Ordinary or Extraordinary**

It is hereby agreed between the parties hereto that it is their intention that the rent above specified shall be net rent, and shall not be subject to any deduction or reduction for any purpose or purposes whatsoever, and that the tenant is to pay all charges of whatsoever kind or nature against the said premises or any part thereof, whether ordinary or extraordinary and whether exacted or imposed by virtue or reason of, any present or future law, ordinance, order, notice, regulation, rule or requirement of any municipal, State or Federal authority, or of any department, board, bureau, commission or of any agency thereof; of the Board of Fire Underwriters or any authority directing any act to be done, compliance of which is necessary or proper, except and excluding only the (*taxes or assessments on the real estate, the interest upon the mortgage covering said premises, and the premiums for fire insurance covering the building and fixtures therein, and premiums for any other insurance, secured by the owner for the benefit of the owner or his mortgagees*) and he shall, during the term hereby granted, at his own expense, observe and perform all lawful rules, orders, ordinances, notices, violations, regulations and requirements, whether ordinary or extraordinary, of the municipal and other public authorities or any of its departments or bureaus respecting the said premises or the use, occupation or cleanliness thereof, including all sanitary or police laws, ordinances and rules and orders of the Board of Health, department of fire, or any bureau of fire prevention, labor, factory buildings, or any other public department of the City of (*New York,*) or of the State of (*New York,*) or of the (*United States of America,*) which may be applicable to the said premises or in any way affect the net rent thereof, and comply with and execute any and all rules, orders and regulations made for the enforcement or by reason of or pursuant to the Workmen's Compensation Act and the said Tenant covenants and agrees to indemnify and save harmless the said Landlord against any loss, expense or damage, of any character, by reason of his failure to perform any of the aforesaid laws, ordinances, orders, notices, violations, regulations, requirements or rules, it being understood and agreed

Tenant to Pay All Charges

and intended that the foregoing shall apply even though the same result in making permanent structural changes in the building or premises hereby leased, and whether ordinary or extraordinary, but nothing herein contained shall require the said lessee, his successors or assigns to pay any income, transfer or inheritance tax, or any tax imposed on account of the death or the devolution of title to the heirs or devisees of the owner or owners of the premises hereby leased. (See 215 *N. Y.* 427, and 213 *N. Y.* 685.)

MORTGAGES

FORM No. 612

Mortgage

THIS INDENTURE, made the (*fifteenth*) day of (*June*) in the year nineteen hundred and (*sixteen*), between (*Samuel E. Layton of the Borough of Manhattan, New York City*), hereinafter described as party of the first part (*and Susan E. Layton, his wife*), and (*Title Guarantee & Trust Company, a corporation organized under the Laws of the State of New York, whose principal office is at number 176 Broadway, in the Borough of Manhattan, City of New York*), hereinafter described as party of the second part.

WHEREAS, the said (*party of the first part*) by virtue of a certain bond or obligation bearing even date herewith, (*is*) justly indebted to the said party of the second part in the sum of (*Five thousand*) dollars, lawful money of the United States, secured to be paid, together with the interest thereon, at the time and in the manner expressed in said bond or obligation.

For recital in building loan mortgage, see p. 1255.

IT BEING THEREBY EXPRESSLY AGREED, that the whole of the principal sum shall become due after default in the payment of interest, taxes, or assessments, as hereinafter provided.

NOW THIS INDENTURE WITNESSETH, that the party of the first part, for the better securing the payment of the sum of money mentioned in the said bond or obligation, with the interest thereon, and also for and in consideration of one dollar paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby grant and release unto the party of the second part, and to (*its successors*) and assigns forever, all

[*Description*]

* * * * * TOGETHER with the appurtenances, and all the estate and rights of the party of the first part, in and to said premises, TO HAVE AND TO HOLD the above granted premises unto the party of the second part, (*its successors*) and assigns forever. PROVIDED ALWAYS, that if the party of the first part or the heirs, executors, or administrators of the party of the first part, shall pay unto the party of the second part, (*its successors*) or assigns, the said sum of money

Clause to be added in purchase money mortgage, see p. 1256.

[1251]

General Form

mentioned in the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said bond or obligation, that then these presents and the estate hereby granted, shall cease, determine and be void.

AND the party of the first part covenants with the party of the second part as follows:

First. That the party of the first part will pay the indebtedness as provided in this mortgage and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises herein described, according to law. Said premises may be sold in one parcel, any provision of law to the contrary notwithstanding.

Second. That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the party of the second part. Should the party of the second part by reason of such insurance against loss by fire, as aforesaid, receive any sum or sums of money, such amount may be retained and applied by the party of the second part toward payment of the sum hereby secured, or the same may be paid over either wholly or in part to the party of the first part, (*his heirs*) or assigns, to enable the party of the first part to repair said buildings or to erect new buildings in their place, or for any other purpose or object satisfactory to the party of the second part, without affecting the lien of this mortgage for the full amount secured thereby before such damage by fire, or such payment over, took place.*

Third. And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of the party of the second part after default in payment of interest for thirty days, or after default in the payment of any tax or assessment for thirty days after notice and demand, or after default

In installment mortgage substitute for "Third" "Clause for installment mortgage," p. 1256.

* If subject to prior mortgage, add:

"This mortgage is subject and subordinated to two mortgages, one given to secure ten thousand (\$10,000) dollars and interest and the other, five thousand (\$5,000) dollars and interest, respectively, now prior liens on said premises.

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the interest on either or both said prior mortgages, and should such interest remain unpaid and in arrears for the space of ten days, or should any suit be commenced to foreclose either said prior mortgages, then the amount secured by this mortgage and the accompanying bond shall become and be due and payable at any time thereafter at the option of the owner or holder of this mortgage.

AND IT IS HEREBY FURTHER EXPRESSLY AGREED, that should any default be made in the payment of the interest on either or both said prior

General Form

for thirty days after notice and demand in the payment of any installment of any assessment for local improvement heretofore or hereafter laid which is or may become payable in annual installments, and which has affected, now affects or hereafter may affect the said premises, notwithstanding that such installment be not due and payable at the time of such notice and demand; and also, that the whole of the said principal sum shall become due at the option of the party of the second part upon any default in keeping the buildings on the premises insured against loss by fire as required by paragraph marked "second" above, or immediately upon the actual or threatened demolition or removal of any building erected or to be erected upon said premises, or if after application by any holder of this mortgage to two or more fire insurance companies lawfully doing business in the State of New York, and issuing policies upon real property situate in the place where the mortgaged premises are situate, the companies to which such application has been made shall refuse to issue such policies.

Fourth. That the holder of this mortgage, in any action to foreclose it, shall be entitled, without notice and without regard to the adequacy of any security for the debt, to the appointment of a receiver of the rents and profits of said premises; and in the event of any default or defaults in paying said principal or interest, such rents and profits are hereby assigned to the holder of this mortgage as further security for the payment of said indebtedness.

Fifth. That until the amount hereby secured is paid, the party of the first part will pay all taxes, assessments and water rates which may be assessed or become liens on said premises, and, in default thereof, the holder of this mortgage may pay the same, and the party of the first part will repay the same with interest, and the same shall be liens on said premises and secured by this mortgage.

mortgages, the holder of this mortgage may pay such interest, and the amount so paid, with legal interest thereon from the time of such payment, may be added to the indebtedness secured by this mortgage and the accompanying bond, and shall be deemed to be secured by this mortgage and said bond, and may be collected thereunder."

If to be subordinated to new mortgage to take place of existing building loan, insert:

"This mortgage is and shall at all times be subject and subordinate in lien to the lien of a building loan mortgage and to any permanent first mortgage in an amount not exceeding \$135,000 and interest and to all amounts which may at any time be advanced thereon not exceeding in the aggregate \$135,000 and interest and the holder of this mortgage agrees to execute any proper agreement to evidence such subordination."

General Form

Sixth. In the event of the passage after the date of this mortgage of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgage for State or local purposes, or the manner of the collection of any such taxes, so as to affect this mortgage, the holder of this mortgage, and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of said land requiring the payment of the mortgage debt, and it is hereby agreed that if such notice be given, the said debt shall become due, payable and collectible at the expiration of said thirty days.

Seventh. That the mailing of a written notice or demand by depositing it in any post office, station or letter box, enclosed in a post-paid envelope addressed to the owner of record of said mortgaged premises and directed to such owner at the last address actually furnished to the holder of this mortgage, or, if no such address has been furnished, then to such record owner at the mortgaged premises, shall be sufficient notice and demand in any case arising under this instrument.

Eighth. That the party of the first part will execute any further necessary assurance of the title to said premises, and will forever warrant said title.

Ninth. The party of the first part, and any subsequent owner of the premises described herein, upon request, made either personally or by mail, shall certify, by a writing duly acknowledged, to the party of the second part or to any proposed assignee of this mortgage, the amount of principal and interest then owing on this mortgage and whether any offsets or defences exist against the mortgage debt; upon failure to furnish such certificate after the expiration of six days in case the request is made personally, or after the expiration of thirty days after the mailing of such request in case the request is made by mail, this mortgage shall become due at the option of the holder thereof.

Tenth. If any action or proceeding be commenced by any person other than the holder of this mortgage, (except an action to foreclose this mortgage or to collect the debt secured thereby) to which action or proceeding the holder of this mortgage is made a party, or in which it becomes necessary to defend or uphold the lien of this mortgage, all sums paid by the holder of this mort-

 Recital for Building Loan

gage for the expense of any litigation to prosecute or defend the rights and lien created by this mortgage (including reasonable counsel fees), shall be paid by the party of the first part, together with interest thereon at the rate of six per cent. per annum, and any such sum and the interest thereon shall be a lien on said premises, prior to any right, or title to interest in or claim upon said premises attaching or accruing subsequent to the lien of this mortgage, and shall be deemed to be secured by this mortgage and by the bond which it secures. In any action or proceeding to foreclose this mortgage, or to recover or collect the debt secured thereby, the provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

IN WITNESS WHEREOF, the said party of the first part has signed and sealed this instrument the day and year first above written.

(SAMUEL E. LAYTON,)

(SUSAN E. LAYTON,) [SEAL.]

Witness:

(CLAUDE V. PALLETZ.)

(Acknowledgment)

If building loan mortgage, substitute following recital:

Recital for Building Loan Mortgage

WHEREAS, the said executed and delivered a certain bond or obligation bearing even date herewith, conditioned for the payment on the day of, nineteen hundred and, to said party of the second part, ... or assigns, of the sum of dollars, lawful money of the United States, or so much thereof as may be advanced, with the interest on so much thereof as is advanced at any time, to be computed on each sum advanced from the date of such advance at the rate of per centum per annum, ... and to be paid on the day of next ensuing the date hereof and semi-annually thereafter, TOGETHER with

Purchase Money — Installment

all fixtures and articles of personal property attached to, or used in connection with said premises, all of which it is declared are to be covered by this mortgage.

If purchase money mortgage, add after description:

Clause to be Added in Purchase Money Mortgage

(" Said premises being known as No. 43 West 105th Street and being those which were conveyed to the said party of the first part by Arthur Butler Graham by deed dated June 15, 1916, and delivered simultaneously herewith; this mortgage being given to secure a portion of the consideration named in said deed.")

If mortgage secures bond payable in installments, substitute the following:

Clause for Installment Mortgage

Third. And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of the party of the second part after default in payment of any installment of principal, or after default in payment of interest for thirty days, or after default in the payment of any tax or assessment for thirty days after notice and demand, or after default for thirty days after notice and demand in the payment of any installment of any assessment for local improvement heretofore or hereafter laid which is or may become payable in annual installments, and which has affected, now affects or hereafter may affect the said premises, notwithstanding that such installment be not due and payable at the time of such notice and demand; and also, that the whole of the said principal sum shall become due at the option of the party of the second part upon any default in keeping the buildings on the premises insured against loss by fire as required by paragraph marked "second" above, or immediately upon the actual or threatened demolition or removal of any building erected upon said premises, or if after application by any holder of this mortgage to two or more fire insurance companies lawfully doing business in the State of New York, and issuing policies upon real property situate in the place where the mortgaged premises are situate, the companies to which such application has been made shall refuse to issue such policies.

POWERS OF ATTORNEY

FORM No. 613

Power of Attorney — Short Form

KNOW ALL MEN BY THESE PRESENTS, that the (*Tompkins Machine Company, a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business in the City of Buffalo, New York,*) does hereby make, constitute and appoint (*Austin Baker,*) of (*the Borough of Manhattan, City of New York,*) its true and lawful attorney for it and in its name to (*receive any dividends which are or shall become payable on any of the stock standing in the name of the Tompkins Machine Company on the books of the Cooper Engine Company, of New York, and to give receipt therefor.*)

(*TOMPKINS MACHINE COMPANY,*)

By (*Alvin Tompkins,*) Treasurer.

Attest:

(*FRANK FOSTER,*)

(SEAL)

Secretary.

(Acknowledgment)

FORM No. 614

Power of Attorney — To Manage Business and Real Property

KNOW ALL MEN BY THESE PRESENTS, that I, (*Herbert C. Morton,*) of the (*Borough of Brooklyn, City of New York, being about to depart from the City of New York for a period of eighteen months,*) have made, constituted and appointed, and by these presents do make, constitute and appoint (*Frederick Morton*) my true and lawful attorney in fact, for me in my name, and to my use, (*during my absence from the City of New York,*) to ask, demand, sue for, recover and receive all manner of goods, chattels, debts, rents, interest, sums of money and demands whatsoever, due or hereafter to become due and owing, or belonging to me, on account of the business now carried on by me as (*a wholesale dealer in leather and findings,*) at (*No. 5 Dey street, in the*

To Manage Business

Borough of Manhattan, City of New York,) and to make, give and execute acquittances, receipts, releases or other discharges for the same, whether under seal or otherwise, and to make, execute, indorse, accept and deliver in my name or in the name of my said attorney all checks, notes, drafts, warrants, acknowledgments, agreements and all other instruments in writing, of whatsoever nature, as to my said attorney may seem needful for the carrying on of the said business; and also for me and in my name and stead to employ all workmen, clerks, assistants and servants necessary and proper to enable my said attorney more effectually to conduct and carry on my said business, and to discharge any and all such workmen, clerks, assistants or servants, and to do, execute and perform and finish for me, in my name and stead, all and singular those things which shall be necessary and expedient, or which my said attorney shall judge necessary and expedient in and about, for or concerning my said business; and to enter into and take possession of any lands, real estate, tenements, houses, stores or buildings, or parts thereof, belonging to me, that may become vacant or unoccupied, or to the possession of which I may be or may become entitled, and to receive and take for me and in my name and to my use all or any rents, profits or issues of any real estate to me belonging, and to let the same in such manner as to my attorney shall seem needful and proper, and from time to time to renew leases, (*but not for a period extending beyond the first day of May in the year one thousand nine hundred and five;*) and also to execute and deliver all deeds, leases, mortgages and writings in that behalf requisite and necessary, and for me and in my name to commence, and prosecute any suits or actions or other legal proceedings for the recovery of possession of any of my lands or for any goods, chattels, debts, duties, demands, cause or thing whatsoever, due or to become due or belonging to me, and to prosecute and follow and discontinue the same, if he shall deem proper, and for me and in my name to take all steps and remedies necessary and proper for the conduct and management of my said business, and for the recovery, receiving, obtaining and holding possession of any lands, tenements, rents or real estate, goods and chattels, debts, interest, demands, duties, sum or sums of money or any other thing whatsoever, that is, are or shall be by my said attorney thought to be due, owing, belonging to or payable to me in my own right or otherwise; and also for me and in my name and stead to

To Borrow Money

appear, answer and defend in all actions and suits whatsoever which shall be commenced against me; and also for me and in my name to compromise, settle and adjust, with each and every person or persons, all actions, accounts, dues and demands, subsisting or to subsist between them or any of them, and in such manner as my said attorney shall think proper; and for the better doing, executing or performing of any or all of the premises, I do hereby further give unto my said attorney full power to constitute, appoint and authorize in his place and stead, and as his substitute, one or more attorney or attorneys, for me, with full power of revocation, hereby giving to my said attorney power and authority to do, execute, and perform and finish for me and in my name all and singular those things which shall be expedient and necessary, or which my said attorney shall judge expedient and necessary in and about, for or concerning the premises, or any of them, as fully as (I,) the said (*Herbert C. Morton,*) could do if personally present, hereby ratifying and confirming whatever my said attorney or his substitute shall do or cause to be done in, about or concerning the premises, and any part thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this (*fifteenth*) day of (*September,*) one thousand nine hundred and (*two.*)

(*HERBERT C. MORTON.*) [SEAL]

(Acknowledgment)

FORM No. 615**Power of Attorney — By a Partnership, to Borrow Money**

KNOW ALL MEN BY THESE PRESENTS, that we, (*Benjamin Müller, Aron Müller and Gabriel Müller, composing*) the firm of (*Aron Müller & Sohn,*) of (*Halberstadt, Germany,*) have made, constituted and appointed, and by these presents do make, constitute and appoint (*Rudolf Conried,*) of (*the City, County and State of New York,*) our and each of our true and lawful attorney in fact, for us in the name of the said firm to open an account in the name of (*Aron Müller & Sohn,*) with the (*Second National Bank,*) of (*New York,*) to borrow money in the name of said firm from said (*Bank,*) and to indorse and deposit therewith as collateral to such loans, warehouse receipts,

To Borrow Money

bills of lading, storage receipts, and refinery certificates, and in connection therewith to sign, indorse, draw, accept, make, execute and deliver all such notes, checks, bills of exchange and other contracts or instruments in writing with or without seal and to deposit collateral therewith and convey the title thereto to said (*Bank*,) and also to sign our firm name as attorney to any transfer of any stocks, bonds or other securities whatsoever or agreements or papers, or paper-writings or evidences of debt, or property in any way connected with or belonging to our said business, and to do any act or acts or to make any contract or contracts or sign any paper or papers connected with (*the American branch of*) our said business or in which it shall be necessary to sign the name of our said firm and to buy and sell exchange; to negotiate notes, drafts or bills of exchange and to provide for the security of notes, bills or other obligations discounted by said (*Bank*) on behalf of said firm and in the name of said firm to deposit security with said (*Bank*) against such discounts; and to borrow money against the stocks and bonds of said firm; to sign any paper or papers in connection therewith or in which it shall be necessary to sign the name of our said firm; it being intended to give, and hereby giving and granting unto our said attorney power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as we might or could do if personally present; hereby ratifying and confirming all that our said attorney shall do or cause to be done by virtue hereof; and any such notes, checks, bills of exchange, contracts or instruments, stocks, bonds or securities or other paper of whatsoever nature signed, indorsed, drawn, accepted, made, transferred, executed or delivered by our said attorney shall bind and are hereby ratified and confirmed by the undersigned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the (*fourth*) day of (*June*,) in the year one thousand nine hundred and (*four*.)

(*BENJAMIN MULLER*,) (SEAL.)

(*ARON MULLER*,) (SEAL.)

(*GABRIEL MULLER*,) (SEAL.)

Sealed and delivered

in the presence of

(*JONATHAN EDWARDS*.)

(Acknowledgment)

FORM No. 616**Power of Attorney**

KNOW ALL MEN BY THESE PRESENTS, that I, (*Charles Coe of Englewood, State of New Jersey,*) being about to depart from the State to enter into the defense of my country, have made, constituted and appointed, and by these presents, do make, constitute and appoint my wife, (*Laura Coe of the same place,*) my true and lawful attorney in fact for me and in my name, to do any and all acts which I could do if personally present, hereby intending to give her the fullest power and not intending by anything hereinafter contained to limit or cut down such full power, giving and granting unto her full power to ask, demand, sue for, recover and receive all manner of goods, chattels, debts, rents, interest, sums of money and demands whatsoever, due or hereafter to become due and owing or belonging to me on any account, and to make, give and execute acquittances, receipts, releases or other discharges for the same, whether under seal or otherwise, and to make, execute, indorse, accept and deliver in my name or in the name of my said attorney, all checks, notes, drafts, warrants, acknowledgments, agreements and all other instruments in writing of whatsoever nature, as to my said attorney may seem needful.

With full power and authority to sell, transfer or do any other act concerning any stocks or bonds which I may have or possess, and to transfer the same in any manner required by any corporation, company or law; with full power and authority to enter into and take possession of any and all lands, real estate, tenements, houses or other buildings or parts thereof, belonging to me, whether vacant or otherwise or to the possession of which I may be or may become entitled, and to receive and take for me and in my name and to my use all or any rents, profits or issues of any real estate to me belonging, and to let the same in such manner as my attorney shall deem needful and proper and from time to time, to renew any and all leases; with full power and authority to grant, convey, mortgage or lease any such lands or property and to execute and deliver any and all deeds, leases and mortgages and writings in that behalf, requisite and necessary and for me and in my name to commence and prosecute any suits

General Form

or actions or other legal proceedings for the recovery of the possession of any such lands or property or for any goods, chattels, debts, duties, demands, cause or thing whatsoever, due or to become due or belonging to me and to prosecute and follow and discontinue the same, if she shall deem proper, and for me and in my name to take all steps and remedies necessary and proper for the conduct and management of my affairs and business and for the recovery, receiving, obtaining and holding possession of any lands, tenements, rents or real estate, goods and chattels, debts, interest, demands, duties, sum or sums of money or any other thing whatsoever, that is or shall be by my said attorney thought to be due, owing, belonging to or payable to me in my own right or otherwise; and also for me and in my name and stead, to appear, answer and defend in all actions and suits whatsoever, which may be commenced against me; and also for me and in my name to compromise, settle and adjust with each and every person or persons all actions, accounts, dues and demands, subsisting or to subsist between them or any of them, and in such manner as my said attorney shall think proper; and for the better doing, executing or performing of any or all of the premises, I do hereby further give unto my said attorney full power to constitute, appoint and authorize in her place and stead and as her substitute one or more attorney or attorneys for me with full power of revocation, hereby giving to my said attorney power and authority to do, execute and perform and finish for me and in my name all and singular those things which shall be expedient or necessary or which my said attorney shall judge expedient or necessary in and about, for or concerning the premises, or any of them, as fully as I, the said (*Charles Coe*) could do if personally present, hereby ratifying and confirming whatever my said attorney or her substitute shall do or cause to be done in, about or concerning the premises, and any part thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this (28th) day of (*June*), one thousand nine hundred and (*sixteen*.)

(*CHARLES COE.*)

(Acknowledgment)

Bankruptcy

FORM No. 617

**Bankruptcy — General Power of Attorney in Fact, by Partnership
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE (*Eastern*) DISTRICT OF (*New York*.)**

In the Matter of (<i>RALPH JUDSON</i>), Bankrupt.	}
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To (*Oliver James, William Henry and Austin Shaw, composing the firm of James, Henry & Shaw, attorneys,*) or any of them,
or :

We, (*Henry Weston*) and (*Alfred James, both of the City of Poughkeepsie,*) in the County of (*Dutchess*) and State of (*New York,*) composing the firm of (*Weston & James,*) do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other place and time as may be appointed by the court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof, may be held, and then and there from time to time, and as often as there may be occasion, for us and in our name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of the said bankrupt, and for us to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due us under any composition, and for any other purpose in our interest whatsoever, with full power of substitution.

 Bankruptcy

IN WITNESS WHEREOF, we have hereunto signed our names and affixed our seals the (*fifth*) day of (*April*, A. D., 1916.)

(*HENRY WESTON*,) (SEAL.)

(*ALFRED JAMES*.) (SEAL.)

UNITED STATES OF AMERICA, }
 (*Southern*) District of (*New York*,) } ss.:

On this (*fifth*) day of (*April*, 1916,) before me personally appeared (*Henry Weston*,) to me known and known to me to be the individual who executed the foregoing instrument as a member of the firm of (*Weston & James*,) who, being by me duly sworn, did say: That he resides in (*the City of Poughkeepsie, New York*;) that he is a member of the above-named firm of (*Weston & James*;) that he executed the foregoing letter of attorney in behalf of said firm for the purposes therein mentioned, and that he was authorized to execute the same.

(*ARTHUR EASTON*,)

Notary Public,

(*New York*) County.

FORM No. 618

Bankruptcy—Special Power of Attorney in Fact

IN THE DISTRICT COURT OF THE UNITED STATES,
 FOR THE (*Southern*) DISTRICT OF (*New York*.)

In the Matter of (<i>CHARLES P. LAWSON</i> ,) Bankrupt.

} In Bankruptcy.

To (*James Vernon, or Alfred Benjamin*,) or (.....):

The (*American Refining Company*) of (*74 Wall Street, in the Borough of Manhattan, City of New York*,) County of (*New York*) and State of New York, hereby authorizes you, or any one of you, to attend the meeting of the creditors in this matter, adver-

Bankruptcy

tised or directed to be holden at (*No. 115 Broadway, Borough of Manhattan, City of New York,*) on the (*fifteenth*) day of (*May, 1916,*) before (*William H. Willis,*) Esq., referee, or any adjournment thereof, and then and there, and from time to time, as often as may be necessary, for it and in its name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt.

IN WITNESS WHEREOF, The (*American Refining Company*) has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officers, this (*fifth*) day of (*September, A. D., 1916.*)

(*AMERICAN REFINING COMPANY,*)

By (*Frederick Warde,*)
(*President.*)

Attest:

(*ANTHONY POLLOCK,*)

(SEAL.)

Secretary.

(Acknowledgment)

SATISFACTION PIECES

FORM No. 619

Satisfaction of Mechanic's Lien

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*I*), (*Thomas Wentworth*), of (*724 Lexington Avenue, in the Borough of Manhattan, City of New York*), do hereby certify, that a certain mechanic's lien, filed in the office of the clerk of the County of (*New York*), on the (*30th*) day of (*August*), one thousand nine hundred and (*fifteen*), at (*eleven*) o'clock (*20 minutes*), in the (*fore*)noon, in favor of (*Thomas Wentworth*), claimant, against the building and lot situate on the (*north*) side of (*East 54th*) Street, (*in the Borough of Manhattan, City of New York*), and known as No. (*324*), in said street, for the sum of (*\$764 59/100*), claimed against (*James Robinson*), as owner, and (*Patrick Mullen, as contractor*), is paid and satisfied, and (*I*) do hereby consent that the same be discharged of record.

WITNESS, (*my*) hand and seal, this (*5th*) day of (*January*, 1916.)

(*THOMAS WENTWORTH.*)

(Acknowledgment)

FORM No. 620

Discharge of Municipal Lien *

To the (*Comptroller of the City of New York*), the (*Armory Board of the City of New York*), and to Whom it May Concern:

(*JAMES MATHEWS*), of (*75 West 75th Street, Borough of Manhattan, City of New York*),

(*DOES*) HEREBY CERTIFY, that a certain lien filed in the office of the (*Comptroller of the City of New York*) and with the (*Armory Board of the City of New York*), on the (*21st*) day of (*May, 1916*), against the moneys of the (*City of New*

* Should be executed in duplicate, one copy being with the financial officer in whose office the notice of lien was filed; and the other copy with the officer, board, bureau or department with which the lien is filed.

Mortgage — Individual

York) applicable to the public improvement therein described and to the contract in writing entered into on the (3d) day of (*March*, 1913,) between the (*City of New York, acting by the Armory Board of said city,*) and (*Murphy Brothers Contracting Company,*) as contractor for the (*erection and completion of an Armory Building for the 8th Regiment of Field Artillery, National Guard of the State of New York,*) for the sum of (*eight hundred and fifteen*) (\$815.00) dollars, claimed against (*Murphy Brothers Contracting Company, contractor,*) and the moneys due and to grow due to said (*contractor*) out of said contract, is paid, satisfied and discharged, and said lienor does hereby consent that the same may be discharged of record.

(JAMES MATHEWS.)

Dated (*New York, September 15, 1916.*)

(Acknowledgment)

[In cities of the first class the original mortgage must be produced for cancellation of signature or an order obtained under Laws 1912, Ch. 254.]

FORM No. 621**Satisfaction of Mortgage — Individual**

KNOW ALL MEN BY THESE PRESENTS, that (*I, John Bowers,*) DO HEREBY CERTIFY that a certain indenture of mortgage, bearing date the (*eleventh*) day of (*December,*) nineteen hundred and (*twelve,*) made and executed by (*William Dean of the Borough of Manhattan, in the City of New York,*) to secure payment of the principal sum of (*twelve thousand* (\$12,000)) dollars and interest, and duly recorded in the office of the (*Register*) of the County of (*New York,*) in liber (126) of mortgages, of Section (4,) page (275,) on the (*twelfth*) day of (*December,*) nineteen hundred and (*twelve,*)

IS PAID, and do hereby consent that the same be discharged of record.

Dated the (*twenty-fifth*) day of (*April,*) nineteen hundred and (*sixteen.*)

(JOHN BOWERS.) (L. S.)

In presence of

(WALTER BURT.)

(Acknowledgment)

FORM No. 622**Satisfaction of Mortgage — Corporation**

KNOW ALL MEN BY THESE PRESENTS, that (*The Pelham Realty Company of the Borough of Manhattan in the City of New York,*)

DOES HEREBY CERTIFY, that a certain indenture of mortgage, bearing date the (*twenty-third*) day of (*February,*) nineteen hundred and (*thirteen,*) made and executed by (*William Schley of the Borough of Manhattan in the City of New York,*) to secure payment of the principal sum of (*fifteen thousand*) dollars and interest, and duly recorded in the office of the (*Register*) of the County of (*New York,*) in liber (320) of mortgages, of Section (6,) page (112,) on the (*twenty-fourth*) day of (*February,*) nineteen hundred and (*thirteen.*)

IS PAID, and does hereby consent that the same be discharged of record.

IN WITNESS WHEREOF, the said (*Pelham Realty Company,*) has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officers on the (*tenth*) day of (*March,*) nineteen hundred and (*sixteen.*)

(*THE PELHAM REALTY CO.,*)

(SEAL.)

By (*CHARLES NOBEL,*) Pres.

Attest: (*FRANK BARROWS,*)

Secretary.

(Acknowledgment)

FORM No. 623**Release of Part of Mortgaged Premises — Individual or Corporation**

THIS INDENTURE, made the (*7th*) day of (*March,*) nineteen hundred and (*sixteen,*) between (*Samuel Wallace,*) of (*the Borough of Manhattan, City of New York,*) party of the first part, and (*Manhattan Realty Corporation, a domestic corporation, whose principal place of business is at number 54 Canal Street, Borough of Manhattan, City of New York,*) party of the second part,

Release of Part of Mortgaged Premises

WHEREAS, (*the Manhattan Realty Corporation,*) by indenture of mortgage, bearing date the (*second*) day of (*December,*) nineteen hundred and (*fifteen,*) recorded in the office of the (*Register*) of the County of (*New York,*) in liber (314) of mortgages, of Section (6,) page (260,) on the fourth day of December, nineteen hundred and fifteen, for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements, of which the lands hereinafter described are part, unto the (*above-mentioned Samuel Wallace who thereafter duly assigned said mortgage to the New York Trust Company by an assignment dated December 2, 1915, and recorded December 4, 1915, in liber 314, section 6, of mortgages, at page 264, which said mortgage was thereafter duly assigned by the said The New York Trust Company to the party hereto of the first part by an assignment, dated March 6, 1916, and intended to be recorded simultaneously herewith,*)

AND WHEREAS, the party of the first part, at the request of the party of the second part, has agreed to give up and surrender the lands hereinafter described unto the party of the second part, and to hold and retain the residue of the mortgaged lands as security for the money remaining due on said mortgage,

NOW THIS INDENTURE WITNESSETH, that the party of the first part, in pursuance of said agreement, and in consideration of (*thirty thousand (\$30,000)*) dollars, lawful money of the United States, paid by the party of the second part, does grant, release and quitclaim unto the party of the second part, all that part of said mortgaged lands described as follows:

(Description.)

together with the hereditaments and appurtenances thereunto belonging, and all the right, title and interest of the party of the first part, of, in and to the same, to the intent that the lands hereby conveyed may be discharged from said mortgage, and that the rest of the land in said mortgage specified may remain to the party of the first part as heretofore,

TO HAVE AND TO HOLD, the lands and premises hereby released and conveyed to the party of the second part, (*its successors*) and assigns to (*its*) and (*their*) own proper use, benefit and behoof forever, free, clear and discharged of and from all lien and claim under and by virtue of the indenture of mortgage aforesaid.

Release of Part of Mortgaged Premises

IN WITNESS WHEREOF, the party of the first part (*has hereunto set his hand and seal the day and year first above written.*)

(*SAMUEL WALLACE.*) (L. s.)

In presence of:

(*HARRY BURKE.*)

(Acknowledgment)

WILLS

FORM No. 624

Short Will — Devising and Bequeathing Entire Estate to Wife

I, (*David Jones*,) of (*the Borough of Brooklyn, in the City of New York*,) do make, publish and declare this to be my last will and testament, hereby revoking all wills and codicils by me at any time heretofore made.

I

I devise and bequeath all the estate and effects whatsoever, both real and personal, to which I may be entitled, or which I may have power to dispose of at my decease, unto my wife, absolutely and forever; and I appoint her sole executrix of this my will and guardian of my infant children during their respective minorities; and I direct that she shall not be required to give any bond or security whatsoever any law to the contrary notwithstanding.

IN WITNESS WHEREOF, I have hereto subscribed my name at the end hereof and hereto set my hand and seal this (*15th*) day of (*March*,) in the year nineteen hundred and (*sixteen*,)

(*DAVID JONES.*) (SEAL.)
(Attestation clause)

FORM No. 625

Short Will

I, (*Clara Coster*,) of the (*Borough of Manhattan, City, County and State of New York*,) being of sound and disposing mind and memory, but realizing the uncertainty of this life and the certainty of death, do hereby make, publish and declare this to be my Last Will and Testament, in manner and form following, that is to say:

FIRST:

I hereby direct that all my just debts, funeral and testamentary expenses be paid by my executor hereinafter named as soon as conveniently may be after my decease.

Short Form

SECOND:

All the rest, residue and remainder of my estate, both real and personal, of whatsoever kind and nature, and wheresoever the same may be situate, of which I shall die seized or possessed, or to which I may in any wise be entitled at the time of my decease, I give, devise and bequeath unto my beloved husband, (*George Coster*,) To Have and To Hold the same unto him, his heirs, legal representatives and assigns, absolutely and forever.

In the event that my said beloved husband shall have predeceased me, or that we shall both die by the same accident, then in either of such events, I hereby give, devise and bequeath my entire residuary estate, as aforesaid, unto any child or children that may be born to me, equally share and share alike, To Have and To Hold the same unto them and each of their heirs, legal representatives and assigns absolutely and forever.

THIRD:

In the event that my said beloved husband shall have predeceased me, or that we shall both die by the same accident, and that I shall not leave any child or children, or descendant or descendants of any deceased child or children me surviving, then and in that event I hereby give, devise and bequeath my entire residuary estate as aforesaid, unto my brother, (*Albert Godwin*,) To Have and To Hold the same unto him, his heirs, legal representatives and assigns absolutely and forever.

FOURTH:

I hereby nominate, constitute and appoint my said beloved husband, (*George Coster*,) executor of this my last Will and Testament, hereby fully authorizing and empowering my said executor, for the more convenient distribution of my estate, or for any other reason that my executor, in the exercise of his discretion may deem proper, to contract for, sell, convey and dispose of at public or private sale any property, real or personal, that I may own at the time of my decease, and to make, execute and deliver the necessary and proper instruments of transfer thereof, or any part thereof, and to mortgage or lease the whole or any part of my real estate, and in his discretion to invest and re-invest in real or personal property, or such securities as to him

Common Form

may seem proper, the whole or any part of my estate, and to execute and deliver the necessary and proper instruments in connection therewith.

In the event that my said beloved husband shall have predeceased me, or that we shall both die by the same accident, and that I shall leave me surviving no child or children, or descendant or descendants of any deceased child or children, then in either of such events, I hereby nominate, constitute and appoint my brother, (*Albert Godwin*,) executor of this my Last Will and Testament, hereby directing that he shall have the same privileges and authority above conferred upon my said husband as executor, with the same force and effect as though said (*Albert Godwin*) had been originally named as such executor.

I hereby direct that none of my said executors shall be required to furnish bonds conditioned for the faithful performance of their duties as such executors.

FIFTH:

I hereby revoke all other and former Wills and Codicils by me at any time heretofore made.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal this (16th) day of (*February*,) in the year one thousand nine hundred and (*sixteen*,.)

(*CLARA COSTER*,) (L. S.)

Witnesseth:

(*HENRY BAYER*,)

(*BENJAMIN TUCK*,)

(Add attestation clause)

FORM No. 626**Common Form of Will**

I, (*James Lyon*,) of the (*Borough of Manhattan, City, County and State of New York*,) husband of (*Mary Lyon*,) of the same place, being of sound and disposing mind and memory and mindful of the uncertainty of human life and intending to dispose of all my property of whatsoever kind and nature upon my death, do hereby make, publish and declare this to be my last will and testament, hereby revoking all other wills and codicils by me at any time heretofore made.

Common Form

ITEM

FIRST. I direct that my funeral expenses and just debts be paid by my executors as soon after my decease as is practicable.

ITEM

SECOND. I give and bequeath unto my friend (*Franklin Barrett*,) my (*author's copy of the first edition of "Spring," by Jonathan Jones, now in my library.*)

ITEM

THIRD. I give and bequeath unto my (*niece, Mabel Jones*,) of (*Newark, New Jersey*,) daughter of my sister (*Arabel Lyon Jones*,) the sum of (*ten thousand*) (\$10,000) dollars.

ITEM

FOURTH. I give and bequeath unto my (*nephew, Thomas Lyon*) of (*New York City*, son) of my late brother (*Peter Lyon*,) the sum of (*fifty thousand*) (\$50,000) dollars.

ITEM

FIFTH. All the rest, residue and remainder of my property and estate, as well real as personal, and wheresoever situated, which at the time of my death shall belong to me or be subject to my disposal by will, I give, devise and bequeath unto (*my beloved wife, Mary Lyon*,) absolutely and in fee-simple to (*her*) and (*her*) heirs, executors, administrators and assigns forever, according to the nature of the property.

ITEM

SIXTH. I hereby nominate, constitute and appoint my (*wife, Mary Lyon*,) execut(*rix*) of this my Last Will and Testament and I hereby direct that my said executrix shall not be required to furnish bond for the faithful performance of her duties as such execut(*rix*.)

IN WITNESS WHEREOF, I have hereunto subscribed my name at the end hereof and sealed these presents, and do publish and declare the foregoing as and for my last will and testament,

Common Form

this (23rd) day of (*January*,) in the year of our Lord one thousand nine hundred and (*sixteen*.)

(*JAMES LYON.*) (SEAL.)

Witnesses:

(*JOHN EVERETT*,)

(*FREDERICK WALTER*,)

(*AARON LOWEN*.)

(Attestation clause)

FORM No. 627

Common Form of Will

I, (*John Tuck*,) of the (*City, County and State of New York, Borough of Manhattan*,) husband of (*Caroline Tuck*,) of the same place, being of sound and disposing mind and memory and mindful of the uncertainty of human life, and intending to dispose of all my property of whatsoever kind and nature upon my death, do hereby make, publish and declare this to be my last will and testament, hereby revoking all former wills and codicils by me at any time heretofore made.

ITEM

FIRST. I direct that my funeral expenses and just debts be paid by my executors as soon after my decease as is practicable.

Debts and funeral expenses.

ITEM

SECOND. I give and bequeath unto my brother (*James Tuck*,) my gold watch, which formerly belonged to our father, and the portrait of our father, and the portrait of our mother, now in our residence.

Specific legacy.

ITEM

THIRD. I give and bequeath unto my nephew (*Frederick White*,) the son of my sister, (*Mary White*,) of (*Mechanicville, New York*,) the sum of (*ten thousand*) dollars.

General legacy.

ITEM

FOURTH. I give and bequeath unto my friend (*Elmer Leeds*,) of (*New York City*,) the sum of (*five thousand*) dollars.

ITEM

Trust.

FIFTH. All the rest, residue and remainder of my property and estate, as well real as personal, and wheresoever situated, which at the time of my death shall belong to me or be subject to my disposal by will, I give, devise and bequeath to my trustees herein-after named in trust, nevertheless, to invest the same and to keep the same invested, and to receive the rents, issues, income and profits therefrom, and after defraying all taxes and other lawful charges upon the same, to pay the net income thereof to the use of my wife, (*Caroline*,) during her life.

Provision
in lieu of
dower.

The provision herein to my said wife as aforesaid I hereby declare is intended to be and is so given to her in full satisfaction and in lieu of and for her dower, which she may or can in any wise claim or demand out of my estate.

ITEM

Residuary
bequest.

SIXTH. Upon the death of my said wife, (*Caroline*,) I direct my trustees to divide the said estate so held in trust into as many shares as I shall have left children me surviving, and I give, devise and bequeath one of each of the said shares unto each of my said children respectively, absolutely, and in fee-simple absolute.

ITEM

Power to
continue in-
vestments.

SEVENTH. I hereby authorize and empower my executors and trustees, or the survivor or survivors, successor or successors, or the one, or those, thereof, who shall qualify and shall be executor and trustee or executors and trustees for the time being, of this my last will and testament, if, in his or their discretion, it shall seem expedient to retain any of my property in the same form of investment in which it may be at the time of my death, any law to the contrary notwithstanding.

And I hereby declare, and it is my will, that my trustees, or those who may be acting, or their successor or successors, shall not be restricted to the investments provided by law in which executors or trustees may invest, but shall have full power and authority to invest in any securities, stocks, bonds, or other investments which in his or their judgment are safe, and for the best interest of my estate, and that all such property, whether in the original

Common Form

or the converted state, shall be subject to the powers, provisions, regulations and trusts herein contained.

ITEM

EIGHTH. It is my will, and I direct, that my executors and trustees herein named, or either of them, shall not be required to give any bond or security whatsoever, any law to the contrary notwithstanding.

ITEM

NINTH. I hereby nominate, constitute and appoint my brother (*Raphael Tuck,*) to be executor and trustee, and my friend (*William Crow,*) of (*New York City,*) to be executor and trustee of this my last will and testament, hereby authorizing and empowering them, or the survivor or survivors, successor or successors, or the one, or those thereof, who shall qualify, and shall be executor and trustee or executors and trustees for the time being of this my last will and testament, if in his or their discretion it shall seem expedient, to sell either at public or private sale and at such times and in such manner and upon such terms and conditions as he, or they may deem most advantageous and for the best interest of my estate, the whole or any part of the real estate of which I may die seized or possessed, or any interest therein, and to execute and deliver any and all conveyances, deeds or other instruments that may be necessary or proper to transfer said property or to carry out the intention of this provision. Power of sale.

And I further give and grant unto my said trustees, or those who may be acting for the time being, or their successor or successors, full power and authority to mortgage or lease any and all of my real estate, or any interest therein on any terms and in any manner as he, or they, in their discretion, shall deem for the best interests of my estate, and I authorize and empower him or them to execute and deliver good and sufficient instruments therefor to carry out the intention of this provision. Power to mortgage and lease.

ITEM

TENTH. I hereby authorize my executors and trustees hereinbefore named to continue the business now owned and carried on by me in the City of New York until he shall be able to sell or dispose of the same with advantage to my estate. I authorize and Power to continue business and incorporate same.

OF Marcus Daly

empower them to sell the same at public or private sale, in their discretion, and upon such terms as in their judgment shall be most beneficial to my estate. I furthermore authorize and empower them to incorporate such business, and to transfer the same for that purpose and to take back the stock or bonds, or both, of the Company so incorporated in payment thereof, in whole or in part, and to do and to perform any other act or thing that they may deem necessary or proper to bring about a sale or other disposition of my said business, and to dispose of the stock or bonds thereof in whole or in part, or to retain the same and to use and employ the proceeds thereof in their discretion in carrying out the provisions of this, my will.

IN WITNESS WHEREOF, I have hereunto subscribed my name at the end hereof and sealed these presents, and do publish and declare the foregoing as and for my last will and testament, this (20th) day of (*January*,) in the year of our Lord one thousand nine hundred and (*sixteen*.)

(*JOHN TUCK.*) [SEAL.]

(Attestation clause)

FORM No. 628**Will of Marcus Daly**

In the name of God, Amen.

(*I, Marcus Daly,*) of (*Anaconda, Montana, sojourning in the City of New York,*) do hereby make this my will, revoking all former wills by me made.

I. I give, devise and bequeath to my wife one-third of all my property, real and personal, the same to be in lieu of all dower and rights of succession, and I hereby appoint her the executor of this will.

II. I direct that my said executor divide the remaining two-thirds of my estate into four equal shares, and I give, devise and bequeath said shares to her to be held by her in trust for the benefit of my children, one share for each child, to pay the income of each child's share to that child until he or she attains the age of thirty years, and then to pay over to that child the principal of such

OF Marcus Daly

share. During the minority of any child such portion of the income of that child's share is to be used by my executor for that child's support, maintenance and education as she deems best, and the remainder of such income is to be accumulated with or without interest until majority, and my said executor shall not be held accountable for any failure to obtain interest on such accumulations.

III. In case of the death of any one of said children before attaining the age of thirty years, I give that child's share to that child's heirs, according to the present laws of the *State of Montana*.

IV. I appoint my wife as guardian of my minor children, and direct that she shall not be required to give any security as such.

V. In the event of the death of my wife before all the trusts herein are executed, I appoint my said four children or the survivors of them as trustees to execute the trusts then unperformed, and also I appoint them as executors in her place in the event of her death, without security either as executors or as trustees, and I direct that my wife shall not be required to give security either as executor or trustee.

VI. I give to my said executor and trustee and to her said successors as executors and trustees full power to sell, without application to court, any and all of my said property, whether real or personal, and to invest and reinvest the proceeds thereof as in her or their judgment she or they may deem best.

VII. I hereby empower any child during the life of the trust for that child to dispose by will of the share so left in trust for him or her.

IN WITNESS WHEREOF, I have hereunto set my hand this (18th) day of (*September*, 1900.)

(Signed) (*MARCUS DALY.*) [SEAL.]

Witnesses:

(Signed) (*GUY WILLIAMS,*)
(*JOHN C. LAMSON,*)
(*ARTHUR DILLON.*)

The foregoing instrument was subscribed in our presence by the testator, this (18th) day of (*September*, 1900,) and at the time thereof he declared to us, being all together, that the instrument

Of Russell Sage

was his will, and at his request and in his presence and in the presence of each other, we subscribed our names as such witnesses.

(GUY WILLIAMS,)

Residing at (*Butte, Montana.*)

(JOHN C. LAMSON,)

Residing at (*Anaconda, Montana.*)

(ARTHUR DILLON,)

Residing at (*New York City.*)

FORM No. 629

Will of Russell Sage

“ I, (*Russell Sage,*) of the (*City and State of New York,*) do hereby make, publish and declare this my last will and testament in manner and form following:

“ FIRST. I direct that all my just debts and funeral expenses be paid as soon after my decease as conveniently can be done.

“ SECOND, I give and bequeath to my sister, (*Fanny Chapin,*) wife of (*Samuel Chapin,*) of (*Oneida, N. Y.,*) should she survive me, the sum of (*ten thousand*) (\$10,000) dollars.

“ THIRD. I give and bequeath to each and every of my nephews and nieces of my own blood me surviving the sum of (*twenty-five thousand*) (\$25,000) dollars, and in the event that any of such nephews or nieces shall have died before me, leaving lawful issue him or her surviving, then I give and bequeath a like sum of (*twenty-five thousand*) (\$25,000) dollars to the surviving lawful issue of each nephew or niece so dying before me, the same to be distributed among such issue share and share alike per stirpes and not per capita.

“ FOURTH. All the rest, residue and remainder of my estate, real, personal and mixed, wheresoever situate, of which I may die seized or possessed, or to which I may be entitled at the time of my decease, I give, devise and bequeath to my wife, (*Margaret Olivia Sage,*) to have and to hold the same to her absolutely and forever.

“ FIFTH. This provision for my wife is to be in lieu of all right of dower in my estate.

“ SIXTH. I authorize and empower my executors, hereinafter named, and the survivors or survivor of them, to sell and dispose

Of Russell Sage

of all or any of the real estate of which I shall die seized or possessed at public or private sale, at such times and on such terms and conditions as they, the survivors or survivor of them, shall deem best or proper, and to execute, acknowledge and deliver all proper writings, deeds of conveyance and transfers therefor.

"SEVENTH. Should any of the gifts and bequests made by me in the second and third paragraphs of this, my will, lapse or fail for any reason I direct that the bequests so lapsing or failing shall go to and form part of my residuary estate and be disposed of under and in accordance with the provisions of the fourth paragraph of this, my will.

"EIGHTH. I nominate, constitute and appoint my wife, (*Margaret Olivia Sage, Dr. John P. Munn, of the City of New York; Almon Goodwin, of said city, and Charles W. Osborne, long my confidential and trusted assistant,*) the survivors and survivor of them, executrix and executors of this, my last will and testament.

"In the event of the death, refusal or inability to act of said (*Charles W. Osborne,*) I hereby nominate and appoint (*Edward C. Osborn,*) also for some years past in my employment, as executor in his place and stead. I further direct that none of the persons above named as executors shall be required to give any bond or security for the proper discharge of their duties.

"NINTH. I hereby authorize and direct my said executors to rent a suitable office for the transaction of the business of my estate and to employ and pay out of the funds of my estate all the clerks and bookkeepers that may be necessary for the proper care and management thereof.

"TENTH. I hereby revoke all former or other wills and testamentary dispositions by me at any time heretofore made.

"ELEVENTH. Should any of the beneficiaries under this my will other than my said wife object to the probate thereof or in any wise directly or indirectly contest or aid in contesting the same or any of the provisions thereof or the distribution of my estate thereunder, then and in that event I annul any bequest herein made to such beneficiary, and it is my will that such beneficiary shall be absolutely barred and cut off from any share in my estate.

"IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal at (*No. 2 Wall Street, New York City,*

Immediate Legacy

Borough of Manhattan,) this (11th) day of (*February, 1901,*) in the presence of (*Edward Townsend and Richard W. Freedman,*) whom I have requested to become attesting witnesses hereto.

(*RUSSELL SAGE.*) [L. s.]

"The foregoing instrument was subscribed, sealed, published and declared by (*Russell Sage,*) as and for his last will and testament in our presence and in the presence of each of us, and we at the same time at his request in his presence and in the presence of each other hereunto subscribe our names and residences as attesting witnesses this (11th) day of (*February, 1911.*)

(*EDWARD TOWNSEND,*)

("No. 130 West One Hundred and Twenty-first Street, New York.")

(*R. W. FREEDMAN,*)

("No. 32 West One Hundred and Twenty-third Street, New York.")

FORM No. 630

**Devise of Dwelling, and Bequest of Immediate Legacy to Wife;
Residuary Estate in Trust for Benefit of Wife, Etc.**

I give and devise to my wife, (*Viola Jones,*) my dwelling house, with the buildings and grounds connected therewith, situate on (*North Broadway*) in the (*Village of Tarrytown, Westchester County, New York,*) in fee, for her use and benefit, absolutely and forever.

I bequeath to my said wife all my household goods, furnishings and effects, including libraries, plate and paintings, and all my horses, carriages, motor vehicles and other property which at my death may be in or about my said dwelling house, in (*Tarrytown, New York*), or the buildings or grounds connected therewith. And I also bequeath to my said wife the sum of (*ten thousand dollars*) (\$10,000,) to be paid to her within three calendar months after my decease.

I devise and bequeath all my real and personal estate whatsoever, excepting only my dwelling house, and the buildings and grounds connected therewith, and also the household goods and effects and other property in and about said dwelling house, buildings and

Residuary Estate In Trust

grounds, which I have hereinbefore given to my said wife, to (*William Randolph*) and (*John Mason*) and their successors, and the survivors of them, to have and to hold the said property and estate upon and for the following trust and purposes: That they, the said (*William Randolph*) and (*John Mason*,) or the survivor of them, or their or his successor or successors for the time being, hereinafter referred to as said trustees, shall, in such manner and upon such terms and conditions as in their or his discretion shall seem most advantageous and for the best interest of my estate, sell, either at public or private sale, the whole or any part of the real or personal property of which I may die seized or possessed, or any interest therein, and shall collect, or otherwise convert into money, such parts of the trust premises as shall not consist of money; and shall out of the proceeds of the said trust estate, pay my funeral and testamentary expenses and debts and the pecuniary legacy bequeathed by this will, and shall invest the residue of the said moneys in the names or name, or under the legal control, of the said trustees or trustee, in any bonds of the United States, or in the bonds or stocks of any commercial corporation regularly paying dividends, or in the bonds or notes of any municipal corporation regularly paying its interest, or in mortgages of improved real property situate within the United States; and I hereby authorize and empower the said trustees or trustee to vary the securities or investments at their or his discretion, or if it shall seem expedient, to retain any of my property in the same form of investment in which it may be at the time of my death, any law to the contrary notwithstanding.

I direct my trustees to pay the income of the said trust estate, and the moneys and investments for the time being representing the same, to my said wife, during her life, in quarterly payments; and I request my said wife, not, however, desiring hereby to impose any legal obligation upon her, to maintain and educate such of my children as shall for the time being be minors and unmarried, and to make proper annual or other allowances to such of my children as shall for the time being have attained the age of twenty-one years, and shall in her opinion require the same.

After the death of my said wife, I hereby declare that the said trustees or trustee may postpone the sale, conversion and collection of all or any part or parts of my said real and personal estate, respectively, so long as they or he shall deem proper, but my real

Power of Appointment

estate shall be considered personalty from the time of my death; and during such postponement, the said trustees or trustee may manage and let upon lease, or mortgage, my real estate or any interest therein, as they in their discretion shall deem to be for the best interest of the trust estate hereinbefore created, and make out of the income or capital of my real and personal estate any outlay which such trustee or trustees may consider proper, for improvements, repairs, insurance, premium on policies, or otherwise for the benefit of the said trust estate.

I hereby declare that my said wife shall have the power of appointing a new trustee or new trustees of this my will, should any vacancy occur during her lifetime.

I hereby constitute and appoint the above-named (*William Randolph*) and (*John Mason*) to be executors of this my will and trustees for the purposes therein named.

FORM No. 631**Bequest of Income of Trust Estate for Life — With Power of Appointment**

All the rest, residue and remainder of my estate, both real and personal, of whatsoever kind and nature, and of or to which I may die seized, possessed or entitled, I give, devise and bequeath to the executors of this my will, upon trust, to receive the income thereof and to apply the net income realized therefrom to the use of my wife, (*Mary E. Lamb*,) during her natural life, and upon her decease to pay over and transfer a part or parts of the principal, not exceeding ten thousand dollars (\$10,000.00), to such of the lineal descendants of my wife or of my father as by her last will and testament my wife may direct and appoint; and subject to the life use therein of my wife and the exercise by her of the said power of appointment, I give, devise and bequeath the beneficial right and title in and to my said residuary estate to (*my two brothers, Samuel and Richard*,) who or their heirs or assigns are to be entitled to the possession thereof upon and after the decease of my wife.

Devise in Trust For Benefit of Children

FORM No. 632**Devise in Trust for the Benefit of Several Children — For Life, With
Power of Appointment**

“ I direct that my executors hereinafter named, or such of them as shall qualify and act, divide all the rest, residue and remainder of the property and estate, both real and personal, of every kind and description and wheresoever situated which shall belong to me or be subject to my disposal at the time of my death, into such number of equal shares as shall be equal to the number of children who shall survive me, and of my children who shall have died before me leaving issue who shall survive me, and set apart one of such equal shares for each of my children who shall survive me, and one of such equal shares for the issue of each child of mine who shall have died before me, leaving issue me surviving; and convey, transfer, deliver and pay over one of such equal shares to the issue of each one of my children who shall have died before me leaving issue me surviving, in equal shares, *per stirpes and not per capita*, to whom I give, devise and bequeath the same accordingly; and that my said executors set apart one of such equal shares for the benefit of each of my children who shall survive me, and I give, devise and bequeath the same to my executors and to such of them as shall qualify and act, as trustees, to have and to hold each share so set apart for the benefit of a child of mine (or the portion thereof not paid over and transferred to such child as hereinafter directed), upon a separate trust, for the benefit of such person for whom or for whose benefit the same shall have been set apart as aforesaid during his or her natural life, which trust, as to each share of such property or estate by this article of my will hereinbefore directed to be held in trust for the benefit of a child of mine, shall be to collect and receive the rents, issues, income and profits of so much thereof as shall be real property and to invest and keep invested so much thereof as shall be personal property with power to call in and change the investments thereof from time to time and to collect and receive the income thereof and after paying thereout all lawful expenses and charges, to apply the net income from the said trust estate arising, from time to time as received, to the use of the person in trust for whom such trust estate shall be held as aforesaid, for so long during the life of such person as he or she shall remain under the age

Devise in Trust For Benefit of Children

of twenty-five years, the income of any such share held in trust for any daughter of mine to be free from the debts, control or interference of any husband she may have; and upon the arrival at the age of twenty-five years, of the person in trust for whom such trust estate shall be so held, to convey, transfer, deliver and pay over one equal fourth part of the capital of such trust estate with all gains and increase of capital thereof, if any, in fee simple and absolutely to such person; and after such person in trust for whom such trust estate shall be held in trust as aforesaid shall have attained the age of twenty-five years, thenceforward for so long during the natural life of such person as he or she shall remain under the age of thirty years to continue to hold the residue of such trust estate, in trust, to collect and receive the rents, issues, income and profits of so much thereof as shall be real property and to invest and keep invested so much thereof as shall be personal property, with power to call in and change the investments thereof from time to time and to collect and receive the income thereof and after paying thereout all lawful expenses and charges, to apply the net income from the said trust estate arising from time to time as received to the use of the person in trust for whom such trust estate shall be held as aforesaid, the income of such trust estate held in trust for any daughter of mine to be free from the debts, control or interference of any husband she may have; and upon the arrival at the age of thirty years of such person in trust for whom such trust estate shall be held to convey, transfer, deliver and pay over one equal third part of the capital of such trust estate then remaining including all gains and increase of capital thereof, if any, in fee simple and absolutely to such person in trust for whom such trust estate shall be held; and from and after such person shall have attained the age of thirty years thenceforward, during the residue of the natural life of such person in trust for whom such trust estate shall have been held to continue to hold the residue of such trust estate in trust to collect and receive the rents, issues, income and profits of so much thereof as shall be real property and to invest and keep invested so much thereof as shall be personal property with power to call in and change the investments thereof from time to time and to collect and receive the income thereof, and after paying thereout all lawful expenses and charges, to apply the net income from the said trust estate arising from time to time, as received to the use of the person in

Bequest in Trust for Benefit of Son

trust for whom such trust estate shall be held as aforesaid, the income of any such trust estate held in trust for any daughter of mine to be free from the debts, control or interference of any husband she may have, and upon the death of such person in trust for whom such trust estate shall be held, to convey, transfer, deliver and pay over the capital of such trust estate as it shall then exist, with all gains and increase of capital thereof, if any, in fee simple and absolutely to such person or persons and in such shares and proportions as the person in trust for whom such trust estate shall have been held, shall by will direct and appoint; and in default of such direction or appointment, or in so far as such direction or appointment may not extend or be effectual, to the issue then surviving of such person in trust for whom such trust estate shall have been held, in equal shares *per stirpes* and not *per capita*, or if such person in trust for whom such trust estate shall have been held as aforesaid shall leave no issue him or her surviving, to the next of kin of such person in trust for whom such trust estate shall have been held, in the shares and proportions to which under the laws of the State of New York as they shall then exist, they would be entitled to the same, if the same were personal property and such person in trust for whom such trust estate shall have been held had died possessed thereof intestate."

FORM No. 633**Bequest in Trust for Son, Giving Him Power of Appointment**

And I direct my executors hereinafter named, and their successors, to convey, assign, transfer and set over the remaining one of said shares to themselves upon the special trust and confidence, to have and to hold the same for and during the term of the natural life of my son, (*Donald Fish*,) and to receive the income, rents, issues and profits thereof, and to apply the same to his use, maintenance and support so long as he shall live, and from and after his death I give, devise and bequeath the said share of my residuary estate to his issue in such shares and with such estates as he may by last will and testament, or instrument in the nature thereof, limit and appoint, and in default of such appointment I give, devise and bequeath the same to his children in equal shares,

Charging Annuity Upon Estate

the issue of a deceased child taking the parent's share by representation.

In the event that my said son shall leave no issue him surviving, I give, devise and bequeath the said share of my residuary estate to his brother, (*Henry Fish*,) or his issue if the said (*Henry Fish*) shall have predeceased his brother.

FORM No. 634

Charging Annuity Upon Estate

I charge upon my estate as an annuity in favor of my wife, and direct the payment by my executors of such yearly sum as shall be sufficient to pay all taxes, assessments, insurance and charges of every kind and nature which may be imposed on any of the lands and premises herein given to my said wife and which shall be sufficient to pay the rent of my pew No. 16, in Trinity Church, in the City of New York, hereinafter given to my wife, during the time that the above shall be held and enjoyed by her.

FORM No. 635

Bequest to Wife for Life, to Revert in Case of Her Remarriage

I give, devise and bequeath to my dear wife, (*Adelaide F. Hodgson*,) for and during the term of her natural life, if she shall remain my widow, and if not I give, devise and bequeath to her until she shall remarry, my dwelling house and stable, with the ground attached to the same, being my present residence, situate at (*the northwesterly corner of Madison avenue and Sixty-eighth street, in the Borough of Manhattan, City of New York*,) and also my country place, known as ("*The Oaks*,") situate at (*Pawling, Massachusetts*,) together with all the lands, stables and buildings belonging thereto; also all my horses, carriages and motor vehicles, and all the furniture and articles of use and ornament of every kind and nature in either of my said residences at the time of my decease.

All of the aforesaid lands and personal property shall revert to and form a part of my residuary estate on the death of my wife or her marriage, if she shall again marry

Legacy — Cutting Off Wife — Son

FORM No. 636**Legacy — Cutting Off Wife**

I give and bequeath unto my wife, ...
the sum of five dollars, which is intended by me to be in full and in lieu and bar of her dower and all and every other right or interest in and to my estate. I make only this provision for her for the reason well known to her and to all my friends and for the further reason that during our married life she was wilfully and wastefully extravagant and brought upon me much unnecessary suffering.

FORM No. 637**Legacy — Cutting Off Son**

I give and bequeath unto my son, ...
the sum of five dollars, and it is my will that this provision be in lieu and bar of every right and interest in and to my estate.

I make only this provision for him for reasons well known to him and to all my family and friends, and for the further reason that during his whole lifetime since he attained, he has been disobedient and ungrateful.

FORM No. 638**Clause Revoking Legacy in Case of Contest ***

If any person named in this my last will and testament shall directly or indirectly institute or become an acting party to any proceedings to set aside, interfere with, or make null any provision of this will or to offer any objections to the probate thereof, or shall in any manner directly or indirectly contest the probate thereof, then and in that event I revoke the provision of this my will in his or her or their favor, and such act or proceedings shall operate and be effective as a release on the part of such heir, next of kin, legatee or devisee to any part of my property or estate, and any provision of my will in favor of such party I do hereby abrogate, annul and make void, and I direct and will that the

* See also Will of Russell Sage, Form 629, *supra*.

Directions to Trustees

person so acting, proceeding or contesting shall receive no part or portion whatsoever of my estate either under this will or otherwise, and the said property that would have gone to him, her or them shall go and become a part of my residuary estate.

FORM No. 639**Revoking Bequests in Case of Participation in Contest**

I will and direct that in case any person shall institute, conduct or share in any proceedings to oppose the probate of this my last will and testament or to impeach or impair or set aside or invalidate any of its provisions, any devise or legacy to or for the benefit of such person or persons under this my last will and testament shall thereupon be revoked and shall become and remain null and void, and such person or persons shall be excluded from any participation in and shall not receive any share or portion of my property or estate, real or personal, and the portion to which such person might be entitled if I had died intestate as to the whole or any portion of my property or estate or any share or portion to which such persons might be otherwise entitled, I give, devise and bequeath to such of the following beneficiaries, to wit: my wife, (*Sarah Clarke Hobson*,) my four children, (*Catherine Louise, Adelaide Frances, Arthur*) and (*Charles Garretson*,) and my two grandchildren, (*Oliver S. Wilson* and *Margaret Hobson Wilson*,) children of my deceased daughter, (*Alice Hobson Wilson*,) as shall not participate in such action, in equal shares as to my said wife and children, and as to my said grandchildren in such proportion as their mother would be entitled to if living.

FORM No. 640**Directing Trustees to Disregard Any Assignment or Anticipation of Beneficiary's Interest**

"No person for whose benefit any trust is hereby created shall have power to anticipate or to dispose of any income directed to be paid or applied to the use of such person until the same shall have fully accrued and become payable to such person, and the

Bequest for Celebration of Masses

trustees of said respective trusts are empowered and requested to disregard and defeat every assignment or other act in contravention of this clause in my will."

FORM No. 641**Declaring Trust to be Made With Reference to the Laws of the State of New York**

"I declare that this, my will, and every part thereof, is made with reference to the present existing laws and statutes of the State of New York, relating to trust and trust estates by will or legal distribution, and without regard to the laws and regulations of any State or country where I may happen to be at the time of my decease, or where any portion of my estate may be situated."

FORM No. 642**Bequest for Celebration of Masses**

I give and bequeath to the (*Society of Saint Vincent De Paul in the City of New York,*) the sum of (*two thousand five hundred*) (\$2,500) dollars, to be applied to the benevolent uses and purposes of the branch of said society connected with (*The Church of Saint Ignatius Loyola,*) and I also give and bequeath unto the pastor of the (*Church of Saint Ignatius Loyola,*) the sum of (*two thousand five hundred*) (\$2,500) dollars, with the request that he shall celebrate masses for the repose of my soul, but this bequest is made to him absolutely and is not conditioned upon the performance of such request.

FORM No. 643**Directing Payment of Transfer Tax Out of Estate**

I hereby direct my executors hereinafter named to pay out of my residuary estate all transfer or inheritance tax that may be imposed upon any devise or legacy herein contained, or any transfer thereof, and that the same shall not be chargeable to, or paid by, any devisee or legatee herein named.

Bequest in Trust — Payable in Installments

FORM No. 644**Suggesting Legal Counsel to Executors**

It is my desire, and I so advise, that my executors and trustees consult my esteemed counsel, Messrs. Ayres & Austin, as their attorneys, in connection with the discharge of their duties as executors and trustees under this Will. I have directed that this provision be inserted herein, absolutely without any suggestion other than my own.

FORM No. 645**Bequest in Trust — Payable in Installments**

I give and bequeath unto my executors hereinafter named the sum of (*three hundred thousand*) (\$300,000) dollars in trust, nevertheless, to be held in three (3) separate and distinct trusts, each one (*one hundred thousand*) (\$100,000) dollars, to be separately managed and invested and from time to time as need be re-invested, and to apply all the net income, interest, issues and profits from each of said trust funds for the use, benefit and enjoyment of each of my beloved sons, (*Robert Lawson, John J. Lawson*) and (*Edward Lawson,*) until he shall have attained the age of (*twenty-one*) (21) years, and thereafter to pay and deliver to him said income, interest, issues and profits during the term of the respective trusts herein created, subject to the payment of installments of principal as hereinafter provided.

When each of my said sons in this subdivision named shall reach the age of (*twenty-one*) (21) years, or in the event that he shall have attained that age at the time of my decease, then I direct my said executors and trustees to pay to him out of the separate trust fund so held for him the sum of (*ten thousand*) (\$10,000) dollars, and upon his arrival at the age of twenty-five (25) years the further sum of (*ten thousand* (\$10,000)) dollars out of said separate trust funds; and I further authorize and empower my said executors and trustees, in the exercise of their sound judgment and discretion, to pay the whole or any part of the remainder of said separate trust fund to the son for whom the same is so held, at any time during his life, after he

Power to Continue Business

shall have attained the age of (*twenty-one*) (21) years, at such time and in such installments and manner as to my executors and trustees may seem proper and for the benefit of my said son.

Upon the decease of said son, and in the event that said separate trust fund so held for his benefit shall not have been wholly paid and delivered to him in his lifetime, or in the event that he shall predecease me, then the whole or so much of said trust fund, with all accumulations thereon, as may remain in the hands of my said executors and trustees, I give and bequeath unto the child or children of such deceased son, equally share and share alike, and if he shall leave no issue surviving then to his brothers or brother in this subdivision named, in equal shares, and to the issue of any of his said brothers that may be then deceased, *per stirpes* and not *per capita*.

FORM No. 646**Power to Continue Business for Advantageous Liquidation**

I hereby expressly authorize and empower my executor hereinafter named, or the survivors of them, or those who may qualify as such executors, to continue the conduct and management of my business, if I shall continue to be engaged in business until the time of my decease, for such reasonable time as they may consider proper, in order that the same may be liquidated and wound up to the best advantage of my estate, hereby expressly absolving them from all personal liability in the conduct and management of said business during such period.

FORM No. 647**Bequest in Trust of Stated Income for Life**

For the benefit of my beloved brother, (*Edward Lawson*,) I direct my executors and trustees hereinafter named, or the survivors or successors of them, to set apart out of my estate such sum as in their judgment will be sufficient to yield, under all probable contingencies, in the judgment of my said executors and trustees, an income which will amount to (*one thousand two hundred*) (\$1,200) dollars a year, and I give and bequeath said sum so set

Bequest in Trust — Stated Income to Wife

apart unto my said executors and trustees, in trust, nevertheless, to be held, managed and invested as authorized by law for the investment of trust funds, and out of the net income, interest, issues and profits thereof to pay and deliver unto my said brother in each year during his life the sum of (*one thousand two hundred*) (\$1,200) dollars, payable in monthly or quarterly installments, as may best suit the convenience of my said brother. If in any year the income of the sum so bequeathed to my executors and trustees shall be insufficient to make up the full sum of (*one thousand two hundred*) (\$1,200) dollars, then and in such case I direct my executors and trustees to make up the deficiency for such year out of the capital so bequeathed to them in trust.

FORM No. 648**Bequest in Trust — Stated Income to Wife — Reduced to Legacy in Case of Remarriage**

For the benefit of my said wife, (*Louise Lawson*,) I direct my executors and trustees hereinafter named, or the survivors or successors of them, to set apart out of my estate such sum as in their judgment will be sufficient to yield, under all probable contingencies, in the judgment of my said executors and trustees, an income which will amount to (*ten thousand*) (\$10,000) dollars a year, and I give and bequeath said sum so set apart unto my said executors and trustees, in trust, nevertheless, to be held, managed and invested as authorized by law for the investment of trust funds and out of the net income, interest, issues and profits thereof to pay and deliver unto my said wife, in each year during her life, and until she shall remarry, the sum of (*ten thousand*) (\$10,000) dollars, payable in monthly or quarterly installments, as may best suit the convenience of my said wife. If in any year the income of the sum so bequeathed to my executors and trustees shall be insufficient to make up the full sum of (*ten thousand*) (\$10,000) dollars, then and in such case I direct my executors and trustees to make up the deficiency for such year out of the capital so bequeathed to them in trust.

Upon the decease of my said wife, or in case she shall die before my decease, or in the event of her remarriage, the said trust

Appointing Executors and Alternates

funds, with all accumulations thereon, if any, shall be and become a part of my residuary estate, to be disposed of as hereinafter provided, except that in the event of the remarriage of my said wife, I direct that my said executors and trustees shall pay unto my said wife out of my estate the sum of (*ten thousand*) (\$10,000) dollars, for her own use and benefit, absolutely and forever.

In the event of the death before my decease of any of my said daughters, (*Margaret Daily, Winifred Thomas and Agnes Burke,*) I give and bequeath the share to which such daughter would have been entitled had she survived me, and in the case of (*Agnes Burke*) free from any trust, to the child or children of such deceased daughter, in equal shares, and in default of such issue, then to the survivors or survivor of my said daughters and the issue of any deceased daughter, *per stirpes* and not *per capita*.

FORM No. 649**Appointing Executors and Alternates**

I hereby nominate, constitute and appoint my said wife, (*Alice Weber,*) and my beloved brother, (*George Weber,*) executors of this my Last Will and Testament, hereby fully authorizing and empowering them, for the more convenient distribution of my estate, or for any other reason that they, in the exercise of their discretion, may deem proper, to contract for, sell, convey, exchange or dispose of, at public or private sale, any property real or personal that I may own at the time of my decease, and to make, execute and deliver the necessary and proper instruments of transfer thereof, or any part thereof, and to mortgage or lease the whole or any part of my real estate, and to execute and deliver the necessary and proper instruments in connection therewith; and to manage any real estate that I may own at the time of my decease, to collect the rents, issues and profits thereof, and to pay all expenses that may be incurred in connection therewith.

In the event that my said brother, (*George Weber,*) shall have died before my decease, then I nominate, constitute and appoint my beloved brother, (*Jacob Weber,*) such executor in his place and stead, if living; if he too shall have died before my decease, then I nominate, constitute and appoint my beloved brother, (*Frederick*

Appointing Testamentary Guardian

Weber,) executor of this my Last Will and Testament; in any of which events I hereby confer upon such executor the same power and authority hereinbefore granted my said wife and my said brother, (*George Weber*,) as though such executor had been originally named herein.

In the event that my said wife shall have died before my decease, or in case we shall both die by the same accident, then in either of such events I nominate, constitute and appoint my said brothers, (*George Weber* and *Jacob Weber*,) executors of this my last Will and Testament, hereby granting unto them the same power and authority hereinbefore conferred upon my said wife and my said brother, (*George Weber*,) as though they had been originally named herein. If either of my said brothers shall have died before my decease, then I nominate, constitute and appoint my said brother, (*Frederick Weber*,) in the place of such deceased brother, with the same power and authority as though he had been originally named herein as such executor.

FORM No. 650**Appointing Testamentary Guardian**

In the event that my said wife shall have died before my decease, or in case we shall both die by the same accident, then in either of such events I nominate, constitute and appoint my said brothers, (*George Weber* and *Jacob Weber*,) guardians of the person and property of my said children during the term of their respective minority. If either of my said brothers shall have died before my decease, then I nominate, constitute and appoint my said brother, (*Frederick Weber*,) in the place and stead of such deceased brother, with the same power and authority as though he had been originally named herein as such guardian.

FORM No. 651**Direction for Cremation of Remains**

It is my desire and request that upon my decease my remains be cremated, and that my ashes be scattered in any way decided upon

Bequest of Proceeds of Life Insurance Policy

by my executors, but it is my express wish that my said ashes shall not be retained in any receptacle or urn.

FORM No. 652**Bequest of Proceeds of Life Insurance Policy**

I give and bequeath the sum of (*five thousand*) (\$5,000) dollars unto my beloved mother, (*Fanny Newton*,) to be paid to her by my executors hereinafter named, as soon as conveniently may be after my decease, for her own use, absolutely and forever.

I have already made provision that my said mother shall receive as beneficiary the sum of (*five thousand*) (\$5,000) dollars under and by virtue of a certain policy of life insurance upon my life which I now hold, issued by the Mutual Life Insurance Company of New York, Number 678,190.

In the event that my said mother shall have died before my decease, or in case we shall both die by the same accident, then in either of such events I give and bequeath the said sum of (*five thousand*) (\$5,000) dollars, hereinbefore bequeathed to her, as well as all moneys made payable to my said mother under the aforesaid policy of life insurance upon my life, issued by the Mutual Life Insurance Company of New York, Number 678,190, unto my beloved sister, (*Adele Newton*,) for her own use, absolutely and forever.

FORM No. 653**Residuary Bequest to Wife — Alternate Bequest to Children**

All the rest, residue and remainder of my estate, both real and personal, of whatsoever kind and nature, and wheresoever situate, of which I shall die seized or possessed, or to which I may in any wise be entitled at the time of my decease or over which I have the power of disposal, I give, devise and bequeath unto my beloved wife, (*Dorothy Newton*,) to have and to hold the same unto her, her heirs, legal representatives and assigns, absolutely and forever.

In the event, however, that my said beloved wife shall have died before my decease, or in case we shall both die by the same accident, then in either of such events I give, devise and bequeath my entire residuary estate, as aforesaid, in the following manner:

A. Two (2) equal one-third ($\frac{1}{3}$) parts thereof unto my said

Spendthrift Trust

wife's beloved daughter, (*Marjorie Bromby*,) now residing in the City of Springfield, State of Illinois, to have and to hold the same unto her, her heirs, legal representatives and assigns, absolutely and forever. In the event that said Marjorie Bromby shall have died before the decease of my said wife or myself, then I give, devise and bequeath the share in my estate to which she would have been entitled if living, unto her child or children, in equal shares, absolutely and forever.

B. The remaining equal one-third ($\frac{1}{3}$) part or share thereof unto the survivors of my executors hereinafter named, in trust, nevertheless for the following uses and purposes, namely: To be held, managed and invested by them, and from time to time as need be re-invested, and to apply all of the net income, interest, issues and profits thereof and therefrom to and for the use and enjoyment of my beloved mother, (*Fanny Newton*,) for and during the term of her natural life, upon her own order and receipt, without accounting, and upon the decease of my said beloved mother, to pay, convey, transfer and deliver the said equal one-third ($\frac{1}{3}$) part of my said estate, with all accumulations thereon, if any, or so much thereof as shall at that time remain in the hands of the survivors of my executors, unto my said beloved sister, (*Adele Newton*,) to have and to hold the same unto her, her heirs, legal representatives and assigns, absolutely and forever. In the event that my said beloved sister shall have died before the decease of my said beloved mother, then the share to which she would have been entitled if living, shall be paid, conveyed, transferred and delivered unto her child or children, in equal shares, absolutely and forever.

FORM No. 654

Spendthrift Trust

“Second. I give, devise and bequeath, to my daughter-in-law, (*Lizzie Morris*,) all of my estate, both real and personal, of every name and nature, in trust, for the purpose hereinafter declared.

“Third. I direct that she keep the real estate and all the personal property, invested in good securities, and apply such portion of the income of the estate from time to time as her judgment may deem necessary for the maintenance and support of my son (*Adon Morris*,) and his family as long as my son may live, (unless

Attestation Clause

my property is sooner exhausted). And at the death of my son, (*Adon S. Morris*,) I direct that my property (or so much thereof as may be left (after supporting my son, (*Adon S. Morris*,) shall be divided equally or in equal proportions, to share and share alike to my son's (*Adon S. Morris'*) children.

"Fourth. I hereby express and emphatically declare that no part of my estate, so given in trust to (*Lizzie Morris*,) for the maintenance and support of my son, (*Adon S. Morris*,) shall go to or be had by, or be obtained in any manner by any creditor of the said (*Adon S. Morris*,).

"Fifth. I further order and direct, that in the event, or in case that my son, (*Adon S. Morris*,) shall at any time during his lifetime, become free and discharged from all his debts, judgments, claims and demands against him, that then and in that case, the said (*Lizzie Morris*) shall on request of my said son, (*Adon S. Morris*,) and without unnecessary delay, deed, transfer, and deliver and pay over to my son, (*Adon S. Morris*,) all of my estate so entrusted and remaining in her hands, and the same shall be received by my son, (*Adon S. Morris*,) and thereafter become his absolute property, to be had, used and controlled by him, and trusteeship of the said (*Lizzie Morris*) shall thereupon cease." (See 169 App. Div. 412.)

FORM No. 655

Attestation Clause

.The foregoing instrument was subscribed by the above-named testatrix, (*Clara Coster*,) at (*the Borough of Manhattan, City, County and State of New York*,) on this (16th) day of (*February*,) in the year one thousand nine hundred and (*sixteen*,) in our presence, and was at the same time and place published and declared by her to us to be her Last Will and Testament, and thereupon we, at her request, and in her presence, and in the presence of each other, did subscribe our names thereto as attesting witnesses, this attestation clause having first been read aloud to us in the presence of the said testatrix.

NAMES

(*HENRY BAYER*,
(*BENJAMIN TUCK*,

RESIDENCES

906 Park Avenue, New York City.)
746 West 167th St., New York City.)

Attestation Clause to Codicil

FORM No. 656**Attestation Clause to Codicil**

Subscribed, sealed, published and declared by said (*Joseph Pulitzer,*) Testator, as and for a Codicil to his last Will and Testament in the presence of each of us, who, at his request, in his presence and in the presence of each other, hereunto subscribe our names as witnesses this (*twelfth*) day of (*July, 1911.*)

(*NORMAN G. THWAITES,*

Limber Magna, Brockledy,

Linconshire, England.)

(*MATTHEW C. FLEMING,*

441 Park Avenue,

New York City, N. Y.)

FORM No. 657**Attestation Clause from Collis P. Huntington's Will**

On this (*thirteenth*) day of (*March,*) one thousand eight hundred and (*ninety-seven,*) the above-named testator, (*Collis P. Huntington,*) in our presence subscribed and sealed the foregoing instrument, and declared the same to be his last will and testament, and thereupon we, at his request, and in his presence, and in the presence of each other have hereunto subscribed our names as attesting witnesses.

(*MAXWELL EVARTS,*

231 Second avenue, New York city.)

(*ANDREW K. VANDERVENTER,*

531 North Broad street, Newark, N. J.)

(*GEORGE E. DOWNS,*

628 Carlton avenue, Brooklyn, N. Y.)

Note.—It is always well to have three witnesses to prove a will, as it may be necessary to prove the will under the laws of another State where three witnesses are required, as for example:

If it involve real estate in a State requiring three witnesses, and the will had only two, testator would die intestate, as to the foreign real estate.

FORM No. 658

Codicil No. 2 to the Last Will and Testament of Joseph Pulitzer

I (*Joseph Pulitzer*) do make, publish and declare this Codicil to my last Will and Testament dated (*sixteenth*) of (*April, one thousand nine hundred and four.*)

First. Whereas my friend (*Dumont Clarke*) mentioned therein as Executor and Trustee is lately deceased, I hereby nominate and appoint (*Charles Evans Hughes*) now or late Governor of the State of (*New York*) to be executor and Trustee in place of the said (*Dumont Clarke*) with like force and effect as if he had been originally named as Executor and Trustee.

Second. I nominate and appoint (*Frederick Newton Judson*) of St. Louis, lawyer, and (*J. Angus Shaw*) now in the office of the New York World both Executors and Trustees of my said Will in addition to the Executors and Trustees named in my said Will or in the Codicil dated the (*twenty-third*) of (*March, one thousand nine hundred and nine*) with like force and effect as if they had been originally named as Executors and Trustees provided however that the said (*Frederick Newton Judson*) shall only act as Executor and Trustee until my son (*Joseph*) reaches the age of thirty years and that the said (*J. Angus Shaw*) shall only act as Executor and Trustee until my son (*Herbert*) reaches the age of (*twenty-one*) years and I direct that the power of removal given under my said Will shall not extend to the Executors and Trustees appointed by this Codicil.

Third. In case the said (*Frederick Newton Judson*) and (*J. Angus Shaw*) or either of them shall decline to act as Executors and Trustees or having so acted shall either by death or disability or of his own wish cease so to act then I nominate and appoint (*Robert Weeks de Forest*) of (*New York*) lawyer, as Executor and Trustee of my said Will in place of the said (*Frederick Newton Judson*) or (*J. Angus Shaw*) so ceasing to act.

Fourth. I give and bequeath to the said (*Charles Evans Hughes*) the sum of (*one hundred thousand*) dollars (\$100,000) to the said (*Frederick Newton Judson*) the sum of (*fifty thousand*) dollars (\$50,000) to the said (*J. Angus Shaw*) the like sum of (*Fifty thousand dollars*) (\$50,000) and to the said (*Robert Weeks de Forest*) the like sum of (*Fifty thousand dollars*) (\$50,000) to

Codicil

be received and accepted by them respectively in lieu of commissions as Executors and Trustees and I direct that no compensation or commission as such shall be paid to them except that in the case of the Trusts created under my said will this provision shall not apply to the Commissions allowed by law for receiving and paying out the income of the respective Trust funds and I direct that no bond or other security shall be required from them.

IN TESTIMONY WHEREOF, I have to this Codicil subscribed my name and affixed my seal this (*seventeenth*) day of (*January, one thousand nine hundred and ten.*)

(Attestation Clause)

JOSEPH PULITZER. [SEAL]

FORM No. 659

Codicil

I, *George Rose, of the City, County and State of New York*, having made my last will and testament bearing date the *21st* day of *July*, in the year one thousand nine hundred and *fifteen*, do now make and publish this codicil thereto which is to be taken as an addition to and a part of my said last will and testament.

First. I revoke the appointment of *Roger Main* as one of my executors of my said last will and testament, and declare that it is my intention and desire that my executrix and executor shall be my wife, *Mary Rose*, and my friend, *Harry Stafford*.

Second. I also authorize my said executors to invest and keep invested my said estate as provided in the "fourth" paragraph of my said last will and testament in any securities or other forms of investment which they, in their discretion, shall deem proper or advisable, irrespective of the law governing investments by executors and trustees, and I also authorize my said executors to continue any of my present investments as long as my said executors shall in their discretion determine to be advisable and to the interest of my estate.

And I hereby ratify and confirm my said last will and testament in every respect save so far as any part of the same is inconsistent with this codicil.

IN WITNESS WHEREOF, at the end of this codicil to my last will and testament I have subscribed my name and affixed my

Letter to Accompany Will

seal this *twenty-first* day of *May*, in the year one thousand nine hundred and *sixteen*.

GEORGE ROSE. (SEAL.)

Subscribed by the above-mentioned testator in the presence of each of us, and at the same time declared by him to be a codicil to his last will and testament, and thereupon we at his request and in his presence and in the presence of each other signed our names as subscribing witnesses.

Witnesses:

JOHN J. JAMES, Hotel Netherlands, N. Y. City.

DAVID WILLCOX, 12 Portland avenue, Brooklyn.

FORM No. 660
Letter to Accompany Will
Letter of Instruction in Case of My Death

First. I own.....burial lot....., and desire to be buried

Second. I desire to examine my papers and destroy such as are of no value.

Third. I have safe deposit vault.

Fourth. I have valuable papers in the following places:

Fifth. I have deposits in the following banks and trust companies:

Sixth. I am insured in the following companies:

Seventh. I have..... mortgages on my property.

Eighth. My estate consists principally of:

Ninth. In case of my death I desire the following persons to be notified at once: My family

My executors.....

My counsel, Kent & Blackstone, No. 1 Wall street, New York city, and.....

Tenth. My last will and testament is in the safe-keeping of my counsel, Kent & Blackstone, 1 Wall street, New York city.

Notice.—Deliver this letter of instructions to some one who would in all probability be notified at once of your death, and whom you are in the habit of seeing daily.

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